

**STANDARD TERMS AND CONDITIONS OF SUPPLY**

**Notice: Any acceptance of Supplier's offer is expressly limited to acceptance of these Terms and Conditions and Supplier expressly objects to any additional or different terms proposed by Customer. No other pre-printed terms and conditions on any form shall modify these Terms and Conditions even if signed by Supplier. Any order to perform work and/or Supplier's performance of the work shall constitute Customer's acceptance and agreement to these Terms and Conditions ("Acceptance").**

**1. Definitions.** Unless Supplier otherwise agrees: "Confidential Information" means (i) information that is designated in writing as "confidential" or "proprietary" or equivalent term by the party disclosing such information at the time of written disclosure, and (ii) information that is orally designated as "confidential" or "proprietary" by the party disclosing such information at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within twenty days after the oral or visual disclosure; "Contract" means these Terms and Conditions together with either: (i) the contract agreement signed by both parties for the Products and/or Services; or (ii) where no written contract agreement is so signed by both parties, the purchase order provided by Customer and accepted by Supplier in writing, for the supply of Products or Services or for the license of Software (excluding any additional or different terms and conditions than these Terms and Conditions) and Supplier's final written quotation or proposal executed by Supplier; "Contract Fees" means the agreed prices, rates and fees stated in the Contract for the Products and/or Services and for the license of Software, including adjustments (if any) in accordance with the Contract; "Customer" means the entity to which Supplier is providing Products or Services under the Contract; "Data" means all information and data of any type, form or nature (including, but not limited to, Software) which may be furnished or made available to Customer, directly or indirectly; "Data Subject" means an identified or identifiable natural person or to any legal entity if such legal entity is subject to data protection legislation in their country of incorporation; "Effective Date" means the effective date of the Contract, as stated in the Contract, or where no date is stated in the Contract, the earlier of the date on which the Contract is fully executed or the date of Acceptance; "Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site; "Personal Data" is any information relating to a Data Subject; "Products" means the equipment, parts, materials, supplies, and other goods Supplier has agreed to supply to Customer under the Contract, excluding Software; "Supplier" means the entity providing Products, Software and/or Services under the Contract; "Section" means a Section of these Terms and Conditions except where the context requires otherwise; "Services" means the services Supplier has agreed to perform for Customer under the Contract, which may include without limitation, professional services, support services and Software-as-a-Service; "Site" means the premises where Products are delivered or Services are performed, not including Supplier's premises or premises of Supplier's subcontractors, from which it performs remote Services; "Software" means a computer program or compilation of data that is fixed in any tangible medium of expression or any storage medium and shall include Supplier's proprietary software, such as that software provided for operation of the Products; "Terms and Conditions" means these "Standard Terms and Conditions of Supply", comprising Sections 1 to 20.

**2. Pricing.** Unless otherwise specified by Supplier in writing, the Fees do not include domestic or international shipping charges beyond the point of delivery set forth in Section 6, the cost of insurance during the time Customer bears risk of loss, or charges for demurrage, port fees, pier handling, marshaling, or heavy lifts or any other costs.

**3. Payment.**

**3.1.** Unless otherwise agreed to by Supplier in writing, Customer shall pay Supplier without right of set-off within thirty days following the date of Supplier's invoice. Supplier shall invoice Customer at the times stated in the Contract or, where no time is stated in the Contract, at the following times: (i) 25% of the Fees upon the Effective Date; and (ii) the balance of the Fees upon shipment of Product or completion of the Services; provided (iii) notwithstanding subsections 3.1(i) and (ii), monthly in arrears for Services that are provided over a period longer than one month. In the event Customer makes further purchase commitments pursuant to the Contract after the Effective Date, the additional Fees applicable to such further purchase commitment shall be invoiced in accordance with the foregoing except for the purpose of this Section 3.1, the "Effective Date" shall be taken to mean the date on which the further purchase commitment is effective. If Customer fails to make any payments to Supplier when due, without limiting Supplier's rights and remedies, Customer shall pay a late payment charge computed at the rate of 2% per month on the overdue balance, or the maximum rate permitted by law, whichever is less, for each calendar month, or fraction thereof, that payment is late.

**3.2.** Unless otherwise agreed to by Supplier in writing, Customer shall establish, at Customer's expense in a form acceptable to Supplier, a confirmed, irrevocable, unconditional, sight letter of credit allowing for pro-rata payments to Supplier for all amounts due under the Contract. All payments by Customer, not otherwise covered by an applicable letter of credit, shall be made by wire transfer to the account identified by Supplier.

**3.3.** For each day payment is delayed by Customer, Supplier's delivery or performance obligation shall be extended for a like period of time.

**3.4.** In the event a Contract or any portion thereof is terminated by Supplier in accordance with Section 10 at any time prior to the shipment of the Products, performance of the Services or provision of the Software, pursuant to which Supplier will be entitled to calculate and collect termination charges from Customer, Supplier shall be entitled to draw on the letter of credit established by Customer hereunder for such termination charges as calculated by Supplier, upon presentation of the following documents: (i) Supplier's invoice showing the amount of termination charges due by Customer; and (ii) one (1) copy of the termination notice. The

letter of credit established by Customer hereunder shall contain language necessary to acknowledge and permit a draw by Supplier in accordance with this Section 3.4.

**4. Taxes and Duties.** Supplier shall be responsible for all corporate and individual taxes measured by net income due to performance of or payment for work under this Contract ("Supplier Taxes"). Customer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Customer or Supplier or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Supplier Taxes ("Customer Taxes"). The Contract Fees do not include the amount of any Customer Taxes. If Customer deducts or withholds Customer Taxes, Customer shall pay additional amounts so that Supplier receives the full Contract Fees without reduction for Customer Taxes. Customer shall provide to Supplier, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

#### **5. Compliance with Laws**

**5.1.** (i) Subject to Sections 5.1(ii) and 5.3, Supplier shall comply with laws applicable to the manufacture of Products and its performance of Services. (ii) Customer shall comply with laws, regulations and government requirements applicable to the installation, application, operation, use and disposal of the Products, Software and Services.

**5.2.** Supplier's obligations are conditioned upon Customer's compliance with all U.S. and other applicable trade control laws and regulations. Customer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Customer and specified as the country of ultimate destination on Supplier's invoice.

**5.3.** Notwithstanding any other provision, Customer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import and/or export licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfillment of Customer's obligations, except that Supplier shall obtain any license or registration necessary for Supplier to generally conduct business and visas or work permits, if any, necessary for Supplier's personnel. Customer shall provide reasonable assistance to Supplier in obtaining such visas and work permits.

**5.4.** If Customer is an agency or instrumentality of, or is owned by, the government of any country, Customer hereby unconditionally and irrevocably represents, warrants and covenants to Supplier that: (a) the execution, delivery and performance by Customer of the Contract constitutes private and commercial acts, rather than public or governmental or sovereign acts; (b) Customer is generally subject to civil and commercial law and to legal proceedings, and Customer hereby waives any right of immunity (governmental, sovereign or otherwise) which Customer or any of its assets may currently have or may have in the future.

#### **6. Delivery, Title Transfer & Risk of Loss**

**6.1.** Unless otherwise specified by Supplier in writing, for shipments that do not involve export from the customs jurisdiction of shipping point of origin, including shipments from one European Union ("EU") country to another EU country, Supplier shall deliver Products to Customer FCA Supplier's facility or warehouse (Incoterms 2020). Title and risk of loss to such Products shall pass to Customer upon such FCA delivery.

**6.2.** For export shipments, Supplier shall deliver Products to Customer FCA Supplier's facility, place of manufacture or warehouse (Incoterms 2020). Title and risk of loss to such Products shall pass to Buyer upon such FCA delivery. Supplier does not participate in "routed export transactions" as defined in 15 CFR 30.1(c), and will be responsible for Electronic Export Information filing. When Customer arranges the export or intercommunity shipment, Customer will provide Supplier evidence of exportation or intercommunity shipment acceptable to the relevant tax and custom authorities.

**6.3.** Partial deliveries are permitted. Supplier may deliver Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon (i) prompt receipt by Supplier of all information necessary to proceed with the work without interruption; and (ii) timely discharge of Customer's responsibilities under the Contract. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Customer shall so notify Supplier within ten days after receipt. Notwithstanding anything in this Section 6, Supplier grants only a license, and does not pass title, for any Software provided by Supplier under this Contract, and title to any leased equipment remains with Supplier.

**7. Excusable Delay.** Supplier shall not be liable or considered in breach of its obligations under this Contract to the extent that Supplier's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control including, but not limited, to acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts or omissions of Customer, affiliates of Customer or their agents or other contractors or suppliers, any act or omission by any governmental authority, strikes, labor disputes, transportation shortages, or any vendor non-performance or delay caused by any of the foregoing. If an excusable event occurs, the schedule for Supplier's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event and resume performance. If acts or omissions of the Customer or its affiliates, or their agents or other contractors or suppliers cause the delay, Supplier shall also be entitled to an equitable price adjustment.

## **8. Warranty**

**8.1.** Supplier warrants that Products shall be delivered free from defects in material, workmanship and title, that Services shall be performed in a competent, diligent manner in accordance with any specifications in the Contract, and that Software, whether embedded in a Product furnished hereunder or provided separately, will, at the time of delivery by Supplier, conform in all material respects to Supplier's specifications relating to such Software as referenced in the Contract.

**8.2.** Unless otherwise stated in the Contract: (i) the warranty period with respect to a Product and Software embedded on a Product shall be fifteen months from the date of Product shipment, or twelve months from the date the Product has been placed in service, whichever occurs first; (ii) the warranty period for Services shall be three months from performance of the applicable Service; (iii) the warranty period for Software provided separately shall be three months from the date on which the relevant version of the Software was initially made available to Customer; and (iv) notwithstanding the foregoing, the warranty period for ongoing Services such as support services or Software-as-a-Service (including, without limitation, any Products, Software and other deliverables provided as part of such Services) shall be concurrent and co-terminus with the term of the Contract for such Services; and (v) notwithstanding the foregoing, unless otherwise expressly agreed by Supplier, the warranty period for repair services performed on out-of-warranty Products shall be ninety days from the completion of the repaired services (the "Warranty Period"). The warranty for the repair services performed on out-of-warranty Products shall be limited to the workmanship of the services and any new parts provided as part of the service, but do not extend to the failed Product itself. If the original new Product warranty period applicable to the failed Product has not expired, no additional warranty or extension of such warranty period shall be granted for the repaired Product.

**8.3.** If any Product, Software or Service does not meet the above warranties within the Warranty Period, Customer shall promptly notify Supplier in writing and, if applicable, make the Product available to Supplier, per Supplier's specifications, for inspection. In the event Supplier determines that the Product or Software or part thereof, or Services provided, failed to meet the foregoing warranties set forth in this Section 8 (except as to title) within the Warranty Period, Supplier shall: (i) at its option, repair or replace the defective Product(s) or Software, as applicable; and/or (ii) re-perform defective Services. If despite Supplier's reasonable efforts, Supplier determines that a non-conforming Product cannot be repaired or replaced, Supplier shall refund or credit monies paid by Customer for such non-conforming Products, provided Customer returns such non-conforming Products to Supplier undamaged. Warranty repair, replacement or re-performance by Supplier shall not extend or renew the applicable Warranty Period. Customer shall bear the costs of access for Supplier's remedial warranty efforts including removal and/or installation costs associated with the repair and replacement of the defective Products and transportation of the Products to Supplier and back to Customer.

**8.4.** The warranties and remedies are conditioned upon: (i) proper storage, installation, use, operation, and maintenance of Products and Software, as applicable; (ii) Customer keeping accurate and complete records of operation and maintenance during the Warranty Period and providing Supplier access to those records; (iii) modification of Products or Services only as authorized by Supplier in writing; (iv) compliance with the restrictions applicable to Software as set out herein; and (v) Customer providing such information as is necessary for Supplier to replicate and validate any non-conformance of Software with the foregoing warranties. Supplier's obligations under this Section 8 shall not apply to: (a) normal wear and tear; (b) any off the shelf consumer goods that may be incorporated into the Products; (c) any Product that is normally consumed in operation; (d) any Product that has a normal life inherently shorter than the Warranty Period specified in Section 8.2; (e) any Product, Software or Service that has been subjected to any other kind of misuse or detrimental exposure, has been involved in an accident, or has been subject to an event of force majeure including, without limitation, any of the events described in Section 7. In the event Customer uses non-Supplier parts or non-Supplier approved repairs with respect to Products, then any damage to, failure of, or performance degradation of the Products, Software or Services indirectly or directly resulting from the use of such parts or repairs, shall not be warranted by Supplier. Further, if such parts or repairs cause personal injury, death or property damage to third parties, Customer shall indemnify and hold Supplier harmless from all claims and liabilities connected therewith. This indemnification shall survive the termination or expiration of the Contract.

**8.5.** This Section 8 provides the exclusive remedies for all claims based on failure of or defect in Products, Software or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Section 8 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. THE PRODUCTS, SERVICES AND SOFTWARE ARE NOT SAFETY DEVICES AND MUST NOT BE RELIED ON OR USED AS SAFETY DEVICES IN REPLACEMENT OF COMPREHENSIVE AND PROPER TRAINING, OVERSIGHT AND OPERATION. ANY PRODUCTS, SERVICES OR SOFTWARE NOT EXPRESSLY INCLUDED IN SUPPLIER'S SCOPE OF RESPONSIBILITIES IN THE CONTRACT ARE EXCLUDED.

## **9. Limitation of Liability.**

**9.1.** The liability of Supplier on any single claim of any kind arising from or related to the formation, performance or breach of the Contract, or any Products or Services, shall not exceed \$1 Million USD or the Contract Fees, whichever is less. The total liability of Supplier for all claims of any kind in connection with, arising from or related to the Contract, including without limitation, the formation, interpretation, performance, termination or breach of this Contract, or any Products, Software or Services shall not exceed in the aggregate: (i) the total Contract Fees paid to Supplier under the Contract, or (ii) if Customer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order.

**9.2.** Notwithstanding anything to the contrary, Supplier shall not be liable for loss of profit or revenues, loss of use, loss of equipment, systems or data, third-party cyber-attack, interruption of business, cost of replacement power, cost of substitute services, product or software, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive

damages, or claims of Customer's customers or other contractors (of any tier) for any of the foregoing types of damages. Supplier shall not be liable for advice or assistance that is not expressly part of the Supplier's work scope under the Contract.

**9.3.** Any liability of Supplier arising hereunder shall end upon expiration of the applicable Warranty Period, provided that Customer may continue to enforce a claim for which it has given prior notice by commencing an action or arbitration, as applicable under the Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such Warranty Period.

**9.4.** If Customer is supplying Products or Services to a third party, or using Products, Software or Services at a facility owned by a third party, Customer shall either: (i) indemnify and defend Supplier from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Section 9; or (ii) require that the third party agree, for the benefit of and enforceable by Supplier, to be bound by all the limitations included in this Section 9.

**9.5.** For purposes of this Section 9, the term "Supplier" means Supplier, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Section 9 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Supplier's liability.

## **10. Termination; Suspension.**

**10.1.** Customer may terminate the Contract for cause if Supplier: (i) becomes insolvent or bankrupt; or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Customer shall first provide Supplier with detailed written notice of the breach and of Customer's intention to terminate the Contract; and (b) Supplier shall have failed, within sixty days after receipt of the notice, to commence and diligently pursue cure of the breach.

**10.2.** If Customer terminates the Contract pursuant to Section 10.1: (i) Supplier shall pay Customer's actual substantiated direct damages incurred by the Customer due to the termination, provided Customer uses reasonable efforts to mitigate such damages; and (ii) Customer shall pay to Supplier: (a) the portion of the Contract Fees allocable to Products completed or substantially completed (provided same is delivered to Customer) and to Software and Services provided up to the date of termination; (b) lease fees incurred; and (c) amounts for Services performed before the effective date of termination.

**10.3.** Supplier may suspend or terminate the Contract immediately for cause if Customer: (i) becomes insolvent or bankrupt; or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Customer providing payment security, making any payment when due, fulfilling any payment conditions or failing to comply with any of the restrictions applicable to Customer's use or disclosure of Software or other Data of Supplier pursuant to the Contract.

**10.4.** In the event Supplier terminates the Contract as provided in Section 10.3: (i) Supplier shall be entitled to retain any down payment, advance payments, progress payments and/or milestone payments made by Customer; (ii) Customer shall pay to Supplier the applicable Contract Fees for any completed or substantially completed Products, Software and Services performed before the effective date of termination, plus expenses reasonably incurred by Supplier in connection with the termination. In addition, Customer shall pay Supplier a cancellation charge equal to 80% of the unpaid Contract Fees applicable to uncompleted made-to-order Products and 15% of the balance of the Contract Fees that would have become payable to Supplier under the Contract but for the termination (**Cancellation Charge**). The parties acknowledge and agree such amounts are a genuine pre-estimate of the damages Supplier will incur as a result of termination of the Contract and are not a penalty.

**10.5.** Subject to Section 10.1, Customer may not terminate, suspend or cancel the Contract (or any portion thereof) without the prior written consent of Supplier, which consent shall be at Supplier's sole discretion. Supplier may condition its consent upon any or all of the remedies set forth in Section 10.4, above.

**10.6.** For purposes of this Section 10, the following shall apply when determining the amount due from Customer for Services performed before the date of termination: (i) for Services performed under time and material pricing, Customer shall pay for all hours performed at Supplier's then-current standard time and material rates; and (ii) for Services performed under a firm fixed price, Customer shall pay: (a) the applicable price for all milestones achieved; and (b) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Supplier's then-current standard time and material rates.

**10.7.** Customer shall pay all reasonable expenses incurred by Supplier in connection with a suspension, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, stand-around costs of personnel who are not re-assigned during the suspension (at Supplier's then-current hourly rates) and costs of storage during suspension. The schedule for Supplier's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

**10.8.** Either party may terminate the Contract upon thirty days advance notice if there is an excusable event, as described in Section 7, resulting in a continuous delay or non-performance under this Contract by the other party lasting longer than one hundred and twenty days. In such case, Customer shall pay to Supplier amounts payable under Section 10.4, excluding the Cancellation Charge; provided, however, in the event the delay or non-performance was caused by acts or omissions of the Customer or its affiliates or their other contractors or suppliers or agents, the Cancellation Charge shall apply.

## **11. Data & Software.**

**11.1.** All Data is proprietary to and shall remain the sole property of Supplier. Customer is granted a limited license for any Data (including Software) delivered by Supplier, whether as part of any Product or separately. This limited, non-exclusive, non-transferable, revocable, personal license allows Customer to use Data for Customer's internal business purposes solely related to the intended use of the Product(s) for which the Data is provided or according to applicable Software specifications. With respect to any Software, the limited license permits Customer: (i) to use the Software only on the Products on which it is installed at the time of delivery or on which it is permitted to be installed as stated in the Contract; or (ii) if the Software is supplied separately for use in relation to specific assets or operations of Customer, to use the Software only in relation to such specific assets or operations of Customer, and only for

the ordinary purpose for which Wabtec designed the Software. Further, if the Software is supplied separately, Customer may make one copy of the Software in machine-readable form solely for backup purposes. In no event is any license or right granted in the source code for any Software provided by Supplier.

**11.2.** All Data that is disclosed to Customer in confidence shall be subject to Section 15 and must neither be: (i) used by Customer, or furnished by Customer to any other entity for the design, manufacture, repair, or maintenance of any products or processes, nor (ii) used for the maintenance or repair of any products not supplied or covered under the Contract, nor (iii) used in the creation, manufacture, development, or derivation of repair and maintenance processes, modifications, spare parts, designs or configuration changes, or to obtain any regulatory approval of any of the foregoing. Customer shall not remove existing notices regarding confidentiality or propriety of Data.

**11.3.** Customer may not distribute copies of the Data to others. Supplier and Customer acknowledge that the Data is protected by contractual obligations, and by copyright, trade secret, and patent laws of the United States of America (and by applicable international treaties). Customer may not decompile, reverse engineer, disassemble, or reduce any Software to a human-perceivable form. BUYER MAY NOT MODIFY, ADAPT, TRANSLATE, LEASE, LOAN, RESELL, DISTRIBUTE, OR CREATE DERIVATIVE WORKS BASED UPON THE DATA OR ANY PART THEREOF, INCLUDING THE LOOK AND FEEL OF ANY SOFTWARE. Nothing herein shall prohibit Customer from forward selling a Product acquired hereunder in which applicable Software is installed. Nothing herein shall create an obligation on the part of Supplier to provide any support, upgrade or revision to any Software, except as otherwise agreed in writing between Customer and Supplier.

**11.4.** With respect to any data or information that Supplier receives from Customer that is generated, collected or recorded by any Products, Software or Services provided hereunder and that is not Supplier's Data ("Customer Data"), Supplier is granted a non-exclusive, perpetual, irrevocable, worldwide limited license to use any such Customer Data for Supplier's internal business purposes, which includes without limitation maintenance, development, research, upgrade or improvement of products, software and services.

## **12. Intellectual Property Indemnification.**

**12.1.** Supplier warrants that any Product, Software or Services furnished hereunder that has been manufactured or performed by Supplier or any affiliate of Supplier, as applicable, shall, without any alteration or further combination, be free of any rightful claim of any third party for infringement of any valid patent in the country the Supplier delivers the Product, Software or Service to the Customer. If Customer notifies Supplier within fifteen days of the receipt of any claim that such Product, Software or Services infringes a patent and gives Supplier information, assistance and exclusive authority to settle and defend such claim, Supplier shall, at its own expense and in its sole discretion: (i) settle or defend such claim or proceeding arising therefrom and pay all damages and costs awarded therein against Customer; (ii) procure for Customer the right to continue using such Product, Software or Service; (iii) modify the Product, Software or Service so that it becomes non-infringing; (iv) replace the Product or Software with an equivalent non-infringing Product or Software or re-perform the Service with a non-infringing Service; or (v) remove the Product or Software or reverse the Services performed and refund the applicable price paid (less reasonable depreciation) and any transportation or installation costs that have been separately paid by Customer.

**12.2.** This Section 12 shall not apply to and Supplier shall have no obligation or liability with respect to any patent infringement claim based upon: (i) any Product that is manufactured, or Service performed, or Software provided, that is customized to Customer's design or specification; (ii) the combined use of any Product or Software with any other apparatus or material; (iii) the use of any Product, Software or Service furnished hereunder to the extent that the infringement claim is based upon a modification to the Product, Software or Service that was made by the Customer (or Customer's affiliates or their employees, agents, contractors or subcontractors); or (iv) the failure of Customer to implement any update provided by Supplier that would have prevented the claim. As to any Product, Software, Service or use described in the preceding sentence, Supplier assumes no liability whatsoever for patent infringement or the unauthorized use of Products, Software or Services, including, without limitation, a breach of the provisions of the Contract.

**12.3.** This Section 12 states Supplier's exclusive and entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for Products, Software and Services.

**12.4.** Each party shall retain ownership of all Confidential Information and intellectual property it had prior to the Contract. All new intellectual property conceived or created by Supplier in the performance of this Contract, whether alone or with any contribution from Customer, shall be owned exclusively by Supplier. Customer agrees to deliver assignment documentation as necessary to achieve that result.

## **13. Changes.**

**13.1.** Supplier may, as it deems necessary and/or from time to time, make engineering or specification changes with respect to the Products, Software or Services. If the engineering or specification change does not constitute a material change in form, fit or function, Supplier is authorized to deliver the Product or Software, or perform the Services, as changed or modified, without notice to or consent from Customer. If the engineering or specification change constitutes a material change in form, fit or function, Supplier must first notify Customer and, if applicable, the parties shall negotiate an equitable adjustment in the Contract Fees and delivery of the Products, Software and Services. Supplier shall have the right to suspend performance pending completion of such negotiation.

**13.2.** Customer may propose changes to Products, Software or Services by written change request to Supplier. Such changes to Products, Software or Services proposed by Customer will be subject to adjustment in the Contract Fees and delivery of the Products, Software and Services. Supplier shall have no obligation to implement any proposed changes unless the change and associated adjustment to the Contract Fees and delivery of the Products, Services and Software is agreed in writing executed by both parties.

**13.3.** In the event of any changes to Products, Software or Services required due to a change in applicable laws, rules and/or regulation that results in increased cost, expense, liability or risk to Supplier, Supplier shall be entitled to reasonable adjustments in

the Contract Fees and delivery timing of the Products, Software and/or Services to compensate and accommodate Supplier for such increased obligations. In the event the parties fail to mutually agree to such reasonable adjustments, either party may pursue resolution pursuant to the dispute resolution process set forth in Section 16.

**14. Inspection & Factory Tests.** Supplier will apply its normal quality control procedures in manufacturing Products and developing Software. Supplier shall attempt to accommodate requests by Customer to witness, at Customer's sole cost and expense, Supplier's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

#### **15. Confidentiality.**

**15.1.** Supplier and Customer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. Supplier and Customer agree that the Contract Fees are Supplier's Confidential Information. Except as set forth below, Supplier and Customer shall keep confidential, and not disclose or use for any purpose other than performance of the Contract and use of Products and Services, any Confidential Information.

**15.2.** Paragraph 15.1 shall not restrict the Receiving Party from disclosing Confidential Information as follows: (a) Supplier may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract; (b) a Receiving Party may disclose Confidential Information to its auditors and tax advisors; (c) Customer may disclose Confidential Information to lenders as necessary for Customer to secure or retain financing needed to perform its obligations under the Contract; (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party; (e) the Receiving Party may disclose Confidential Information in response to a subpoena from a court, arbitration panel, or government or administrative body if it both promptly provides the Disclosing Party with written notice of the discovery request such that the Disclosing Party is able to seek a protective order or other appropriate remedy and cooperates with the Disclosing Party to obtain the protective order or other remedy; in the event that the protective order or other remedy is not obtained, the Receiving Party shall use commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information; and (f) to the extent necessary to enforce the Receiving Party's rights under the Agreement. For each of these exceptions (a)-(f) to the general non-disclosure rule set forth in 15.1 to apply, the Receiving Party must obtain a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Supplier may also retain one archive copy of Customer's Confidential Information.

**15.3.** The obligations under this Section 15 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; or (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information.

**15.4.** Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Customer nor Supplier shall make any public announcement about the Contract without prior written approval of the other party.

**15.5.** Nothing in this Section 15 grants the Receiving Party any license under any invention, patent, trademark or copyright now or later owned or controlled by the Disclosing Party. As to any individual item of Confidential Information, the restrictions of this Section 15 shall expire the earlier of ten years after the date of disclosure or five years after termination or expiration of the Contract. This Section does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

#### **16. Governing Law; Dispute Resolution**

**16.1.** The Contract and any dispute, controversy, or proceeding arising out of or relating in any way to this Contract, whether in contract, tort, common law, statutory law, equity, or otherwise, including any question regarding its existence, validity, or scope, shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any choice of law rules that would cause the application of laws of any jurisdiction other than those of the State of Delaware (the "Governing Law"). The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**16.2.** Any dispute, controversy or claim arising out of or relating in any way to this Contract, whether in contract, tort, common law, statutory law, equity, or otherwise, including any question regarding its existence, validity, or scope, shall be resolved in accordance with this Section 16. If a dispute is not resolved by negotiations, either party shall, by giving written notice that summarizes the nature of the dispute, refer the dispute to a meeting of appropriate higher management, to be held within thirty (30) days after the giving of notice, or such later date as may be mutually agreed. If the dispute is not resolved at the senior management level, the parties shall, within thirty (30) days of the management meeting, or such later date as may be mutually agreed, mediate the dispute in Delaware or Geneva, Switzerland, depending on the location of the parties as described below. If the dispute is not resolved at the mediation, either party may commence arbitration or court proceedings as set forth below:

(i) If the Customer, or any of its affiliates with connections to this Contract, has offices in North America, legal action will exclusively be brought and resolved in the United States District Court for the District of Delaware (where federal jurisdiction exists) or the Courts of the State of Delaware (where federal jurisdiction does not exist), and the appellate courts having jurisdiction of appeals in such courts. Customer agrees that jurisdiction and venue in these Delaware courts is appropriate, and irrevocably submits with respect to any action or proceeding brought pursuant to this Section 16 for itself and in respect of its property, generally and

unconditionally, to the personal jurisdiction of the courts of Delaware, and irrevocably waives any objection that it may now or hereafter have that any such court is an improper or inconvenient forum for any proceeding brought pursuant to this Section 16.

(ii) If neither the Customer nor any of its affiliates with connections to the Contract has offices in North America, the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce (“ICC”). For all matters submitted to arbitration, the number of arbitrators shall be one, unless the amount in dispute exceeds the equivalent of U.S. \$5,000,000, in which event it shall be three, and they shall be selected in accordance with ICC rules. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within thirty days; the third shall be the Chairman. The seat, or legal place, of arbitration, shall be Geneva, Switzerland, or such other location as may be mutually agreed by the parties. The arbitration shall be conducted in English. Relevant documents in other languages shall be translated into English if the arbitrators so direct. In the event of a conflict between the English version and the original version of any documents, the English version shall control. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator(s) shall be final and binding upon both parties. All statements made and documents provided or exchanged in connection with the dispute resolution process described in Section 16 are confidential and neither Party shall disclose the existence or content of the dispute or claim, or the results of the arbitration, to third parties other than outside counsel, except with the prior written consent of the other Party or pursuant to legal process.

**16.3. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT KNOWINGLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE.**

**16.4.** Notwithstanding the foregoing, each party shall have the right at any time to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Contract, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in Section 15 and/or the nuclear use restrictions set forth in Section 17, and/or for Supplier to protect or enforce any patent, trademark, copyright or other intellectual property right, Confidential Information or trade secrets, or to seek interim or conservatory measures.

**16.5.** With respect to the dispute resolution process described in this Section 16, or otherwise pursuant to the terms of the Contract, the parties agree that Supplier will not be required to disclose the basis (including but not limited to costs and margins) for its determination of list prices for Products or Services set forth in its general catalogs or such other prices for Products or Services as may have been agreed to with Customer or proposed by Supplier. Customer agrees not to seek that information in discovery whether the proceeding takes place in court or in arbitration.

**16.6.** To the extent that either party seeks Confidential Information in the course of any court or arbitration proceeding, the parties agree to enter into an appropriate protective order to ensure the confidential treatment of such information, and that, for highly Confidential Information (excluding the information described in paragraph 16.4, which will not be produced under any circumstances), the protective order will allow for the production of such information on an “attorneys’ eyes only” basis, or for review only by the arbitrator or arbitrators or the court.

**17. Nuclear Use.** Products, Software and Services provided by Supplier are not intended for use in connection with any nuclear facility or activity, and Customer warrants that it shall not use or permit others to use Products, Software or Services for such purposes, without the advance written consent of Supplier. If, in breach of this, any such use occurs, Supplier (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Supplier, Customer shall indemnify and hold Supplier (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability. Consent of Supplier to any such use, if any, will be conditioned upon additional terms and conditions that Supplier determines to be acceptable for protection against nuclear liability.

**18. Personal Data Protection.** In the event that Personal Data is provided or made accessible as part of the Contract, Customer and Supplier represent that they will comply with all applicable laws and regulations, including but not limited to, providing notices to or obtaining consents from the Data Subjects when (and if) required. The parties agree to take such security measures, in compliance with applicable data protection laws and adapted to the risks posed by the Personal Data disclosed, to prevent accidental, unauthorized or unlawful access, use, modification, disclosure, loss or destruction of such Personal Data. By entering into a Contract with Supplier, Customer consents to Supplier processing Customer’s Personal Data to: (i) establish and maintain its customer database; (ii) assess respective risk profiles; and (iii) engage in factoring transactions related to Supplier’s receivables. Customer further consents to Supplier’s communication of Customer’s Personal Data to Supplier’s affiliates for the same purposes as set forth herein. Customer and Supplier further agree that any Personal Data obtained from the other party is proprietary and confidential and shall be subject to the Confidentiality provisions of Section 15.

**19. Site Access; Health & Safety Matters.**

**19.1.** If Services are to be performed by Supplier at Customer’s property, Customer shall take all necessary precautions for the health and safety of Supplier’s personnel at the Site. Such precautions include, but are not limited to: (i) providing to Supplier for review Customer’s safety policies and procedures; (ii) instructing Supplier’s personnel regarding: (a) Customer’s safety practices; and (b) the proper and safe handling of, and protection of Supplier’s personnel from exposure to, Hazardous Materials; and (iii) making Customer’s Site medical facilities and resources available to Supplier’s personnel. Without limiting the foregoing, Supplier may, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site. If, in Supplier’s reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions,

Supplier may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, and/or remotely perform or supervise the work. Any such occurrence shall be considered an excusable delay pursuant to Section 7 of the Standard Terms and Conditions of Sale.

**19.2.** Customer shall indemnify Supplier for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were: (i) present in or about Customer's equipment or the Site prior to the commencement of Supplier's work; (ii) improperly handled or disposed of by Customer or Customer's employees, agents, contractors or subcontractors; or (iii) brought, generated, produced or released on Site by parties other than Supplier.

**19.3.** Operation of Customer's equipment is the responsibility of Customer. If Customer requires or permits Supplier's personnel to operate Customer's equipment at the Site, Customer shall indemnify and save Supplier, its employees and agents, harmless from expense and liability (including reasonable attorneys' fees) incurred by or imposed upon Supplier, its employees and agents, based upon exposure to Hazardous Materials, injury to persons (including death) or damage to property resulting from operation of such equipment at the Site by Supplier personnel.

## **20. General.**

**20.1.** Supplier may assign or novate its rights and obligations under the Contract, in whole or in part, without Customer's consent, to any of Supplier's subsidiaries or affiliates, or to any purchaser or other successor in interest of Westinghouse Air Brake Technologies Corporation (or portion thereof to which the Contract relates), and may assign any of its accounts receivable under the Contract to any party for factoring purposes. Customer agrees to execute any documents that may be necessary to complete such assignment or novation. Supplier may subcontract portions of the work, so long as Supplier remains responsible for the subcontracted work. The delegation or assignment by Customer of any or all of its rights or obligations under the Contract without Supplier's prior written consent (which consent shall not be unreasonably withheld) shall be void.

**20.2.** Customer shall notify Supplier immediately upon any change in ownership of more than fifty percent of Customer's voting rights or of any controlling interest in Customer. If Customer fails to do so or Supplier reasonably objects to the change, Supplier may: (i) terminate the Contract; (ii) require Customer to provide adequate assurance of performance (including but not limited to payment), and/or (iii) put in place special controls regarding Supplier's Confidential Information.

**20.3.** If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

**20.4.** The following Sections shall survive termination or cancellation of the Contract as well as any other provisions that expressly limit or exclude liability: 3 through 12, and 15 through 20.

**20.5.** The Contract represents the entire agreement between the parties. No modification, change, amendment, rescission or waiver shall be binding on either party unless agreed in writing by the parties' authorized representatives. The parties represent and warrant that they did not rely upon any statement, oral or written, not contained in this Contract in making their respective decisions to enter into this Contract. The Contract may be signed in multiple counterparts that together shall constitute one agreement.

**20.6.** Except as provided in Section 9, regarding limitation of liability, and in Section 17, above, regarding nuclear use, this Contract is for the benefit of the Customer and Supplier and not for any third party.