
SERVICE ORDER TERMS AND CONDITIONS (TC1005)

1. Sole Agreement. This Service Order, together with the face sheet(s) and any other documents incorporated herein (this "Order"), constitutes the sole agreement between Company and Supplier for the services to be performed hereunder, superseding all prior agreements and understandings, oral or written, not expressly incorporated herein. No additions to or variations from the terms herein shall be binding unless agreed to, in writing, by Company. If Supplier's quotation is incorporated herein, it is made a part hereof only to the extent of specifying the nature and description of the services to be performed, and then only to the extent such terms are consistent with the other terms herein. **ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS WHICH MAY APPEAR IN ANY QUOTE OR COMMUNICATION FROM SUPPLIER OR IN SUPPLIER'S ACKNOWLEDGEMENT OR SIGNED RETURN OF THIS ORDER ARE HEREBY EXPRESSLY OBJECTED TO, SHALL NOT BECOME PART OF THIS ORDER DESPITE COMPANY'S ACCEPTANCE OF SUPPLIER'S PERFORMANCE OF SERVICES OR GOODS AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS SPECIFICALLY RECOGNIZED, ASSENTED TO AND AGREED TO IN WRITING BY COMPANY.**

2. Acceptance. Commencement of the services or delivery of goods called for by this Order in the absence of Supplier's written acknowledgment shall be deemed acceptance of this Order. By acceptance of this Order, Supplier agrees to be bound by and to comply with all the terms and conditions of this Order, including any supplements, and all specifications and other documents referred to in this Order.

3. Prices. All prices are firm unless otherwise stated in this Order. No payment in excess of any monetary limitation appearing on the face of the Order shall be permitted without the prior written approval of the Company. Pricing shall not be adjusted except with prior written approval of the Company.

4. Extra Charges. No charges of any kind, including, but not limited to charges for boxing, packing, loading, bracing or cartage will be allowed unless specifically agreed to by Company in this Order.

5. Transportation. Transportation requirements, if applicable, will be as set forth in this Order. Notwithstanding the stated F.O.B. point, Supplier shall be responsible for any loss or damage occurring to goods during transit when such loss or damage is attributable either to an act or omission of Supplier or its contractors, or to a failure of either Supplier or its contractors to adhere to the express shipping instructions of Company.

6. Authorized Representative. Unless notified otherwise, in writing, by Company, Company's Buyer is the only representative of Company authorized to act in matters relating to this Order.

7. Warranties. Supplier warrants that (a) all goods and/or services sold pursuant hereto will be free of any claim by any third person and that Supplier will convey clear title to Company; (b) all services furnished hereunder shall be performed by technically competent and qualified personnel in a safe and workmanlike manner, shall conform to the requirements of this Order including any specifications attached or referenced herein, shall be performed in accordance with the highest generally accepted professional standards associated with the particular industry, trade, and/or discipline involved and shall be fit for the purpose for which intended; (c) all goods sold pursuant hereto will be of new (unless expressly specified otherwise) merchantable quality, free from all defects in design, workmanship and materials, fit for the particular purpose(s) for which purchased and provided in strict accordance with the specifications, samples, drawings, designs and other requirements (including performance specifications) of this Order; (d) all work hereunder shall be performed in strict accordance with all applicable laws, regulations, codes, and standards of any governmental agency or entity having jurisdiction; and (e) Supplier has all required permits and licenses necessary to perform the services and that its services will conform with all applicable permits and licenses. Copies of such permits or licenses shall be provided to Company upon request. Supplier will promptly notify Company in writing in the event any permit or license related to this Supplier or to Supplier's authorization or capacity to perform hereunder is revoked or has expired. For goods, if at any time prior to one (1) year from the date that the goods are first used for the purposes intended by Company or four (4) years from the date of final acceptance by Company, whichever occurs first, it appears that the goods or any part thereof do not conform to these warranties and Company so notifies Supplier within a reasonable time after such discovery, Supplier, at its sole expense and after obtaining Company's concurrence, shall promptly correct such nonconformity or replace the nonconforming goods. The warranty period for such corrected or replaced goods shall be of an equal duration as the original warranty period and shall commence upon acceptance of such corrected or replaced goods. For services, if at any time prior to two (2) years from the date that the services are completed, it appears that the services do not conform to these warranties and Company so notifies Supplier within a reasonable time after such discovery, Supplier, at its sole expense and after obtaining Company's concurrence, shall promptly correct such nonconformity. The warranty period for such corrected services shall be of an equal duration as the original warranty period and shall commence upon acceptance of such corrected service. If Supplier fails to fulfill its obligations under this paragraph, Company may reject or revoke acceptance and cover by purchasing substitute goods or may proceed to make corrections or accomplish Supplier's work by the most expeditious means available. The cost of cover or

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correction performed by Company shall be for Supplier's account. Company shall not be billed for any task(s) performed unsatisfactorily or defective parts, materials and equipment and shall be reimbursed within thirty (30) days by Supplier upon demand of Company if an invoice has been previously paid for such improper or defective work or goods. The cost of cover or correction performed by Company shall be for Supplier's account. Supplier's liability hereunder shall extend to all damages proximately caused by the breach of the foregoing warranties, including incidental damages such as removal and reinstallation costs, inspections costs and all shipping costs. Any and all expenses (including, but not limited to shipping, manufacturing and labor expenses) incurred by Company in the exercise of its right hereunder, at law and/or in equity, shall be reimbursed by Supplier.

8. Time is of the Essence; Delivery. Timely performance is of the essence of this Order. If any goods are not delivered or services not performed within the time specified in this Order or within a reasonable time if no time is so specified, Company may refuse to accept such goods or refuse to have Seller perform such services and cancel this Order and shall be relieved of all liability for such items. Any additional transportation charges incurred to comply with the time specified in the Order in excess of those which would apply for the usual means of transportation shall be for the account of Supplier. In the event Supplier delivers the goods prior to their scheduled delivery date, Company may, at its option, (i) refuse to accept the goods and return them at Supplier's expense, or (ii) accept the goods but defer payment until the time when payment would have been due had the goods been shipped according to schedule.

9. Company's Property. Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Supplier by Company or specifically paid for by Company and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the property of the Company. Such property (i) shall be clearly marked and identified as property of the Company and shall be safely stored separate and apart from Supplier's property; (ii) shall not be used except in the performance of the services hereunder and Supplier shall not substitute any property for Company's property; (iii) shall be held at Supplier's risk, and kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with loss payable to Company; and (iv) shall be delivered to Company promptly upon its written request, in which event Supplier shall prepare such property for shipment and shall deliver to Company in the same condition as originally received by Supplier, reasonable wear and tear excepted, all at Supplier's expense.

10. Changes. Company may, at any time, and from time to time, by written change order direct or order any changes, additions or deletions in the goods or services to be supplied hereunder. If such changes, additions or deletions affect the Supplier's time for performance or price, Supplier shall promptly notify Company and, if appropriate, an adjustment in this Order will be negotiated. Failure to notify Company in writing within fifteen (15) days of receipt of the change order requesting such change, addition or deletion will result in a waiver by Supplier of such adjustment.

11. Suspension. Company may at its option, by written notice to Supplier, suspend all or any part of its services hereunder. Supplier agrees to resume any suspended services as soon as practicable after receipt of written instructions to do so from Company. Upon suspension of services hereunder, Supplier agrees to waive all claims for damages, including claims associated with the loss of use of or under utilization of Supplier's labor and facilities and the associated overheads thereon. If as a result of suspension, Supplier's costs for completing performance hereunder are increased over the costs Supplier would have incurred had the services not been suspended, Supplier agrees to accept as its sole remedy for the suspension of the services the amount of such increase. Supplier will include language identical to the preceding paragraph in all agreements entered into with its vendors, sub-suppliers and contactors engaged in the furtherance of the services required under this Order.

12. Termination. Company may, at its option, by written notice, terminate this Order or any part thereof upon ten (10) days notice. Upon such termination, Supplier agrees to waive all claims for damages, including claims for loss of anticipated profits and claims for the loss of use or under utilization of Supplier's labor, facilities and equipment and the associated overheads thereon, and to accept as its sole remedy for termination the cost of all services performed and payment for goods delivered and accepted by Company prior to the date of termination and reasonable costs incurred by supplier in terminating the work. Termination shall not relieve supplier of any of its obligations for services already performed or for goods delivered hereunder, including but not limited to complying with all applicable warranties associated with such goods or services. Supplier will include language identical to the preceding paragraph in all agreements entered into with third parties, including, but not limited to, vendors, sub-suppliers and contractors in furtherance of the work required under this Order.

13. Non-Assignment; Subcontracting. Any assignment by Supplier of its rights (other than an assignment of the right to receive payment hereunder) under this Order in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of Company shall be void. Supplier shall not subcontract or delegate performance of all or any part of the work called for by this Order without the prior written consent of Company.

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14. Set-Off. Company shall be entitled at all times to set-off any amount owed at any time by Supplier, or its affiliate(s) to Company or its affiliate(s) against any amount owed by Company or its affiliate(s) to Supplier.

15. Applicable Law. This Order shall be governed by and construed in accordance with the applicable laws of the State of Michigan, except for those laws governing conflict and choice of law.

16. Indemnification. Supplier assumes full responsibility for and agrees to save, indemnify, defend and hold harmless Company and its affiliates from any and all claims, losses, liabilities, damages to property, injuries (including, but not limited to, death) to persons (including, but not limited to, employees of Supplier and Company), fines, penalties, fees (including, but not limited to, legal fees), and all other costs and expenses of whatsoever kind or nature caused by, arising out of, or in any way resulting from, acts or omissions or misconduct or failure of Supplier, its directors, officers, employees, agents, subcontractors and/or subvendors at any tier, unless resulting from Company's sole negligence.

17. Patents. Supplier shall, at its own expense, indemnify, defend and hold harmless Company against any claim, suit or proceeding brought against Company which is based upon a claim, whether rightful or otherwise, that any goods, any part thereof, or any design or the services furnished under this Order constitutes any infringement of any patent of the United States. Supplier shall pay all damages and costs, including legal fees, awarded against Company. In case any goods, any part thereof, or any design or service are held to constitute an infringement and the use of such item or service is enjoined, Supplier shall, at its expense, after obtaining the concurrence of Company, either procure for Company the right to continue using the effected goods, part thereof, or any design or services, replace the effected goods, part thereof, or any design or service with substantially equal but non-infringing goods, part thereof, design or service, modify the goods, part thereof, design or service so they become non-infringing, or remove the goods or part thereof and refund the purchase price and the transportation, installation and removal costs. This paragraph shall not apply to any goods manufactured to Company's detailed design. As to such goods Supplier assumes no liability whatsoever for patent infringement. The last two sentences shall not apply where Company merely issues a rating, duty, or performance specification.

18. Insurance. Supplier shall obtain and maintain for the duration of any work hereunder insurance in forms and amounts satisfactory to Company which may include, but not necessarily be limited to: Comprehensive General Liability (including Contractual Liability coverage insuring the liabilities assumed herein) with minimum limits of liability of not less than \$1,000,000 each per occurrence for bodily injury (including death) and property damage; Automobile Liability and Employers' Liability insurance with minimum limits of liability of not less than \$1,000,000 per occurrence on a single limit basis; statutorily required Worker's Compensation and Employers' Liability (\$100,000) insurance; Excess Liability insurance covering loss in excess of the limits of other insurance policies required herein with minimum limits of liability of \$5,000,000. At Company's sole option and cost, Supplier shall procure Contractor Pollution Coverage insurance covering loss or damage associated with environmental hazards arising out of or in connection with the Services with minimum limits of liability of \$1,000,000. If Supplier's services will occur on or affect property owned or controlled by a railroad, the following additional minimum insurance requirements will apply: (a) Commercial General Liability Insurance or Excess Liability with a combined limit of not less than ten million dollars (\$10,000,000) single limit, bodily injury and/or property damage combined, with an aggregate limit of ten million dollars (\$10,000,000) per annual policy period, and no deductible, for damages arising out of bodily injuries to or death of any person or destruction of property, including the loss of use thereof, in any one occurrence. This insurance shall name Company as additional insured and shall contain a cross liability clause, and an endorsement stating that the insurers will hold harmless and waive rights of subrogation against Company. This insurance shall not exclude liability for work performed within or around railroads and railway tracks. If the ten million dollar (\$10,000,000) Commercial General Liability Insurance or Excess Liability policy(ies) referenced above contain an exclusion for work on, within or around railroads and railway tracks, the Supplier will also provide Railroad Protective Liability Insurance naming Company as additional insured, meeting the same terms specified for the Commercial General Liability or Excess Liability policy(ies) referenced above. (b) Workers' Compensation Insurance complying with the statutes of the state in which the services are being performed covering all employees of Supplier. The policy shall contain employers liability coverage with limits of not less than \$100,000 each accident; \$100,000 each employee disease; and \$500,000 policy limit-disease; and (c) Automobile Liability insurance on all licensed vehicles owned by, hired, leased to or on behalf of the Supplier or its employees in an amount of no less than ten million dollars (\$10,000,000) per occurrence. Supplier shall furnish to Company a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverages are in effect and naming Company on the face of this Order and its affiliates as additional insureds. In addition such certificate indicate that the insurer will not cancel or materially change the coverage until ten (10) days after prior written notice has been delivered to the Company. Nothing in this Paragraph shall be taken as limiting Supplier's liability to Company or any other party.

19. Compliance With Laws. Supplier, in performing its services hereunder, shall ascertain and comply with all applicable Federal, State, and local laws, regulations, and ordinances, including, but not limited to, the Foreign Corrupt Practices Act of 1977, as amended, especially as it relates to payments or gifts to officials, employees, or representatives of foreign governments and Supplier agrees that it

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and all who act on their behalf shall fully and faithfully comply with that Act, and with all applicable trade or industry codes, regulations and standards. Where applicable the following provisions are hereby incorporated by reference in this Purchase Order: (a) Executive Order 11246, and 41 CFR Part 60, as well as 41 CFR Subpart 1-12.8, relating to Equal Employment Opportunity (b) Executive Order 11701, and 41 CFR Part 50-250, 41 CFR Part 60-250, relating to Disabled Veterans and Veterans of the Vietnam Era; (c) the Rehabilitation Act of 1973, and 41 CFR Part 60-741, relating to Employment of the Handicapped.

20. Safety. Supplier shall perform its Services in a safe manner so as to prevent damage, injury or loss to any individuals. Supplier assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of its services.

In the performance of its services hereunder, Supplier shall comply, and cause its subcontractors to comply, with all statutes, regulations and ordinances relating to safety, as well as any specific safety policies and requirements required by Company. If Supplier's services will occur on or affect property owned or controlled by a railroad, Supplier shall also cause all employees and subcontractor employees intending to enter railroad property to undergo FRA track worker safety training prior to entering railroad property. Supplier and subcontractor employees shall carry FRA track worker safety and other qualification cards that may be issued by the applicable railroad company on their person at all times while on railroad property. Supplier shall supply a copy of such FRA track worker safety and other qualification cards to Company prior to Supplier entering on railroad property. Supplier shall also secure permission from the applicable railroad company prior to entering railroad property and shall comply with, and cause its subcontractors to comply with, all safety, operating and clearance requirements that may be imposed by railroad company. At a minimum, Supplier shall require all employees and subcontractor employees intending to enter railroad property to complete Railroad Safety Training at <http://www.e-railsafe.com/>. Employees passing Railroad Safety Training shall wear e-railsafe badges in a conspicuous place on their outer clothing at all times while on railroad property. Supplier shall not proceed with any portion of the services that might endanger or interfere with the movement of trains, railroad operations, or other railroad facilities, until protection reasonably satisfactory to the railroad and/or Company, as applicable, has been provided.

21. Proprietary Information – Confidentiality. Supplier shall keep confidential any technical, process or economic information derived from drawings, specifications and prototype articles, and other data furnished by Company or Supplier learns during the performance of its services and shall not divulge, export, or use, directly or indirectly, such information for the benefit of any other party without obtaining Company's prior written consent. Except as required for the efficient performance of this Order, Supplier shall not use such information or make copies or permit copies to be made of such drawings specifications, or other data without the prior written consent of Company. Upon completion or termination of this Order, Supplier shall promptly return to Company all materials and any copies thereof; such request may be made at any time during or after completion of Supplier's performance. The obligations under this clause shall survive the cancellation, termination or completion of this Order. Supplier shall not advertise or publish the fact that Company has contracted for services from Supplier without prior written permission from Company. Any inventions, processes or other patentable or marketable idea or product developed as a result of Supplier's performance of the services hereunder shall become the exclusive property of Company, and Supplier shall deliver all data, drawings and other documents associated with such development to Company upon completion of the services.

22. Disclosure of Knowledge or Information. Any knowledge or information which Supplier shall have disclosed or may hereafter disclose to Company in connection with a request for a quotation or the purchase of goods or services covered by this Order, shall not, unless otherwise specifically agreed upon in writing by Company, be deemed to be confidential or proprietary information, and shall be acquired free from any restrictions other than a claim for patent infringement as part of the consideration for this Order.

23. Drawings. Unless otherwise specifically agreed in writing by Company any check or approval of drawings by Company will be for Supplier's convenience and will not relieve Supplier of its responsibility to meet all requirements of this Order.

24. Consequential Damages. Company shall not be liable to Supplier for consequential damages of any kind, including, but not limited to, loss of anticipated profits or loss of use of or under utilization of Supplier's labor, facilities or equipment resulting from Company's performance or nonperformance of its obligations under this Order or in the event of Suspension or Termination of this Order pursuant to Paragraphs 11 and 12 respectively.

25. Technical Data. All materials and documents prepared or developed by Supplier in connection with the performance of this Order, including all manuals, data, designs, drawings, plans, specifications, reports, calculations and summaries, shall become the property of Company when prepared, whether delivered to Company or not, and shall, together with any materials and documents furnished to Supplier by Company, be delivered to Company upon request and, in any event, upon termination or completion of this Order.

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26. Force Majeure. Neither party shall be liable to the other for default, failure or delay in providing or accepting goods or services hereunder if such failure is caused by an extraordinary event or occurrence beyond that party's control such as fire, accident, strike, civil disturbance, war, act of terrorism, act of God, embargo, governmental order or regulation, flood, windstorm, explosion, riots, natural disaster, sabotage or any other similar or different contingency beyond the reasonable control of the Company or Supplier, as applicable. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Seller, Company, at its option, may purchase goods or procure services from other sources and proportionally reduce its obligations to Supplier for such goods and/or services hereunder. If requested by Company, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Company deems appropriate. If the delay lasts more than the time period specified by Company, or Supplier does not provide adequate assurance that the delay will cease within such time period, Company may, among its other remedies, immediately cancel this Order without liability.

27. Non-Waiver. Failure or delay of Company to insist upon strict performance of any of the terms and conditions hereof, or to exercise any rights or remedies provided herein or by law, or to properly notify Supplier in the event of breach, or Company acceptance of or payment for any goods or services hereunder or approval of any design, shall not release Supplier from any of the warranties or obligations of this Order and shall not be deemed a waiver of any right of Company to insist upon strict performance hereof, or of any rights or remedies of Company as to any such services or goods (including the right to reject nonconforming goods or to revoke acceptance of such goods) regardless of when performed, shipped, received or accepted, or of any right or remedy of Company as to any prior or subsequent default hereunder.

28. Payment Terms; Records. No later than the third (3rd) business day of each calendar month, Supplier shall prepare and submit to Company an invoice with respect to the preceding calendar month. Unless otherwise agreed to herein payment shall be made in accordance with Net 30th Prox. "Net 30th Prox" means invoice payment is made by Company, or an affiliate of Company, on the 30th day of the month next following the billing month set forth on the invoice (except for February whereby payment is made on the 28th day). If the 30th day (or 28th day as the case may be) falls on a day which is not a business day, payment is made on the next business day. The date of each invoice prepared by Supplier pursuant to this Order shall be the last business day of the calendar month for which the relevant services were provided. Unless this Order is totally priced on a firm fixed price basis, Supplier shall maintain time records, supplier invoices, expense receipts/costs and supporting data and other evidence related to this Order in accordance with generally accepted accounting procedures and practices. All materials shall be preserved until the expiration of two years from the completion of performance by Supplier. Company shall have the right at any time during normal business hours to examine such records which may involve performance under or transactions related to the work statement appearing on the face hereof, or which will permit adequate evaluation of the costs and fee data related thereto. Adjustments in favor of Company arising from any audit performed by Company shall be recognized as an adjustment of any future payment due Supplier or, if no future payment is due Supplier, Supplier shall pay the amount of any such adjustment to Company within thirty (30) days after completion of the audit.

30. Independent Contractor. Supplier is and shall remain for all purposes an independent contractor, and it shall have no power, nor shall it represent that it has any power, to bind Company or to assume or create any obligation, expressed or implied, on behalf of Company.

31. Notices. Unless notified otherwise, in writing, by Company, all notices required under this Order shall be sent to Company's Buyer.

32. Survival of Terms. Those provisions of the Order which by their very nature are incapable of being performed or enforced prior to expiration or termination of the Order or which suggest at least partial performance or enforcement following such expiration or termination shall survive any such expiration or termination of this Order.

33. Company's Remedies. All rights and remedies provided for herein are not exclusive and all rights and remedies of Company hereunder, at law or in equity, shall be cumulative and may be exercised singly or concurrently.