

PURCHASE ORDER TERMS AND CONDITIONS

PARTIES. "Buyer" means Tesmec USA, Inc., located at 12S20 East FM 917, Alvarado, Texas 76009. "Seller" means the party identified on the face of this purchase order. The Buyer and Seller are jointly referred to the "Parties"

1. **DEFINITIONS.** "Purchase Order" means Buyer's purchase order to which these terms and conditions are attached
"Proprietary Information" means (a) all technical information, including functional and technical specifications, designs, drawings, analysis, research, processes, computer programs, methods, ideas, "know how" and the like; (b) all business information, including sales and marketing research, materials, plans, accounting and financial information, customer lists and identities, corporate records, shareholder information, personnel records and the like; and (c) all other valuable information designated by Buyer as confidential expressly or by the circumstances in which it is provided
"Subcontract" means either this Purchase Order or a subcontract which may exist between the Parties.
"Supplies" means all articles, materials, work or services to be furnished by Seller under this Purchase Order.
"Kickbacks" means any tender or offer of tender of any payment or thing of value, or solicitation thereof, in violation of the Anti-Kickback Act of 1986 (41 USC 51-58).
2. **PURCHASE ORDER AND ACCEPTANCE OF PURCHASE ORDER.** This Purchase Order, any attachments, and Seller's invoice(s) comprise the exclusive agreement between the parties. If any conflict exists between the terms of this Purchase Order and Seller's invoice(s), this Purchase Order will control. Additional or different terms or conditions proposed by Seller, or included in Seller's acknowledgment hereof, shall be void and of no effect unless accepted in writing by Buyer. No change in, modification of, or revision to, this Purchase Order shall be valid unless in writing and signed by Buyer's Authorized Procurement Representative. Any of the following shall constitute Seller's unqualified acceptance of this Purchase Order: (a) acknowledgment of the Purchase Order, (b) furnishing of the Supplies, (c) acceptance of any payment called for in this Purchase Order, or (d) commencement of performance under this Purchase Order
3. **PACKING AND SHIPMENT.** (a) **Packaging.** Unless otherwise specified, all packing, packaging and container labeling shall comply with good commercial practice and applicable carrier's tariffs. Supplies shall be prepared for shipment and packed to prevent damage or deterioration and to give optimum protection of the Supplies during shipment and in handling and storage. The packaging, preparation, labeling and shipping of all HAZARDOUS SUBSTANCES, including DANGEROUS MATERIALS, RADIOACTIVE MATERIALS, and EXPLOSIVES, must conform to all applicable International, federal, and state laws and regulations. For explosives, Seller shall apply an appropriate label to each container with description of contents (including hazardous characteristics) clearly designating the U.S. Department of Transportation class of explosive. The packaging, labeling and shipment of explosives must conform to all applicable Federal and State laws, and U.S. Department of Transportation, Federal Aviation Administration, and International Air Transport Association Regulations. Each part must be identified with the "Part Number" and "Loading Date" at a minimum.
(b) **Ship To Rail Division Labeling.** If the Purchase Order "Ship To Address" is "Rail Division," all cartons, shipping documents, invoices, and other materials must be labeled "Rail" and including the purchase order number.
(c) **Handling and Shipping Charges.** The Purchase Order price includes all charges for packing and packaging and for transportation to the F.O.B. point. If the terms of this Purchase Order require delivery F.O.B. place of shipment, the Seller must at that place bear the expense and risk of putting them into the possession of the carrier and at its risk and expense load the Supplies on board. If the terms of this Purchase Order are based on F.O.B. place of destination, the Seller must at his own expense and risk transport the Supplies to that place and tender delivery of them to Buyer.
(d) **Seller's Cost for Failure to Comply.** Failure to comply with Buyer's requirements or other shipping instructions will result in a debit to Seller for the excess costs and may result in the imposition of an administrative charge reasonable in relation to the excess costs incurred by Buyer due to Seller's improper or incomplete delivery
4. **QUALITY CONTROL AND INSPECTION.** (a) **Quality Control System.** Seller shall provide and maintain a quality control system acceptable to Buyer. During the performance of this Purchase Order, Seller's quality control, inspection system, and manufacturing processes are subject to review, verification, and analysis by Buyer and, if this Purchase Order is issued pursuant to a Government contract, Government representatives.
(b) **Inspection, Verification.** Notwithstanding any prior payment or inspection and preliminary acceptance, all Supplies ordered may be subject to (i) inspection, verification, and/or testing during the period of manufacture, (ii) inspection and/or verification prior to shipment, and (iii) final inspection and acceptance at destination. Inspection and verification rights shall extend to the Government if this Purchase Order is issued pursuant to a Government contract. If inspection or verification takes place on Seller's premises, or the premises of Seller's lower-tier suppliers, Seller will provide and require its lower-tier suppliers to provide all reasonable facilities and assistance for the safety and convenience of Buyer and Government inspectors in the performance of their duties.
(c) **Rejected Supplies.** Buyer may reject and hold at Seller's expense, subject to Seller's reasonable disposal instruction, Supplies which do not conform to applicable specifications, drawings, samples, or descriptions or which are defective in material, workmanship, or design. Buyer may hold the rejected Supplies at Seller's expense or return them to Seller's facility at Seller's expense. Without limiting any other rights Buyer may have, Buyer may require Seller to repair or replace at Seller's expense, or refund the price of, any Supplies which fail to meet the requirements of applicable design, specifications, drawings, samples, descriptions, or other requirements of this Purchase Order. Previously rejected Supplies reworked to specifications, or replaced, shall not be re-tendered to Buyer by Seller unless notification of such past rejection is submitted with the re-tender and Buyer has consented to such re-tender.
5. **DELIVERY TIME.** Delivery according to schedule is a primary condition of this Purchase Order. Seller shall not, without Buyer's prior written consent, manufacture or procure materials in advance of Seller's normal flow time or deliver in advance of schedule. In the event of termination or change, no claim will be allowed for any such manufacture or procurement in advance of such normal flow time unless Buyer's prior written consent has been obtained. Buyer may return or store at Seller's expense items delivered in excess of the number ordered or items delivered without authorization in advance of the delivery date as specified for such items. Invoices submitted for unauthorized early shipments will not be processed until the original specified delivery date. If at any time it appears to Seller that any delivery schedule cannot be met, Seller shall notify Buyer as soon as possible and will advise Buyer of the action being taken to tender delivery and the anticipated delivery date. Notification under this clause will not limit Buyer's rights under the TERMINATIONS-STOP WORK clause.
6. **WARRANTY.** Seller warrants that all Supplies furnished hereunder will be free from defects in material and workmanship, conform to applicable specifications, drawings, samples and descriptions and/or other requirements of this Purchase Order and, unless of Buyer's detailed design, be free from design defects. If there is a breach of warranty, Buyer may return the Supplies, at Seller's expense, for correction, replacement or credit as Buyer may elect. All warranties shall run to Buyer and its customers.
7. **CHANGES.** (a) **Changes on Written Notice.** Buyer may at any time by written notice make changes within the general scope of this Purchase Order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery, and (iv) delivery schedule. No change order, express or implied, will be binding unless it is issued by written notice by Buyer's authorized Procurement Representative. Should any such change increase or decrease the cost of, or the time required for, performance of this Purchase Order, an equitable adjustment may be requested by Seller or Buyer in the price, or delivery schedule, or both. No request by Seller for adjustment will be valid unless submitted to Buyer in a form acceptable to Buyer within twenty-five (25) days from the date of notice of such change, and accompanied by an estimate of charges for redundant material or work in process, if any. Any clarification, direction, approval, or assistance as may be provided by Buyer's Program, engineering, or technical personnel concerning the work to be performed or the Supplies to be furnished pursuant to this purchase order shall not constitute or be construed as a change to this purchase order. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of this purchase order as changed
(b) **Claims Related to Changes and Waiver of Claims.** Should any change cause, or result in, redundant material or work in process, any claim covering such redundant material or work in process must be submitted within six (6) months from the date of receipt of written notification of the change. Where the cost of property made redundant as a result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of the property. NOTICE: SELLER'S FAILURE TO SUBMIT A CLAIM TIMELY MAY CONSTITUTE A WAIVER OF THE CLAIM
8. **RESPONSIBILITY FOR BUYER'S PROPERTY.** Seller shall be liable for any loss or destruction or damage to Buyer's property furnished to Seller by Buyer as may be necessary in performance of the Purchase Order. Seller shall be responsible for returning Buyer's property in as good condition as when received except for reasonable wear and tear and for the utilization of it as required by this Purchase Order. Seller shall not include in its price any direct charges for insurance covering loss or destruction of, or damage to, Buyer's property. Buyer's property shall not become a fixture or lose its identity as personalty by reason of it being affixed to any realty, nor will Buyer lose any right, title or interest in Buyer's property which might be incorporated or attachment to any property not owned by Buyer. Buyer shall have the right to enter Seller's premises at all reasonable times to inspect its property and Seller's records with respect to Buyer's property.
9. **USE OF BUYER'S DATA.** (a) **Safeguarding Buyer's Proprietary Information.** Buyer hereby retains all of its rights, title and interest in and to all Proprietary Information.

Seller shall not reproduce, use, disclose or commercialize any of Buyer's information, data, designs and inventions without the express written consent of Buyer and only as necessary, and for the express purpose of, the performance of this Purchase Order. Seller shall use at least the same degree of care in safeguarding Buyer's Proprietary Information as it uses in safeguarding its own proprietary or confidential information. Upon Buyer's request, any or all of Buyer's Proprietary Information will be returned to Buyer or destroyed by Seller at Buyer's direction.

(b) **Safeguarding Intellectual Property.** Buyer owns the copyrights for all deliverable works of authorship, software (comprising source code, object code, sample programs and all improvements, modifications or enhancements relating thereto), software documentation, copyright applications, and copyright registrations created, used, or provided in the performance of this Purchase Order. Seller shall provide full and prompt disclosure of all software developed or modified in the performance of this Purchase Order. Seller hereby irrevocably transfers, conveys and assigns to Buyer in perpetuity all right, title, and interest in and to these copyrights and related intellectual property. Buyer shall have the exclusive right to apply for copyrights and related intellectual property. To the extent that the Supplies are produced to detailed designs not originated and furnished by Buyer or by a process or method, the use of which is not specifically directed by Buyer, Buyer shall have no responsibility to Seller for infringement or misappropriation of patent, trademark, copyright, or trade secret rights of third parties. Seller guarantees that the sale or use of the Supplies or the use of such process or method used in the performance of this Purchase Order will not infringe or be a misappropriation of any United States or foreign patent, trademark, copyright, or trade secret. Seller shall defend, indemnify, and hold Buyer and its customers harmless from any loss, cost, damage, expense (including attorney's fees), or liability which may be incurred on account of infringement or misappropriation, (actual

or alleged) of patent rights, trademarks, copyrights, or trade secrets with respect to the Supplies, and Seller will defend, at its own expense, any action or claim in which such infringement or misappropriation is alleged by third parties.

(c) **Confidentiality of Transaction.** Seller shall not disclose any information relative to this Purchase Order to the general public, in press releases, or in publicity.

(d) **Injunctive Relief.** Seller agrees that a violation of the restriction imposed in this Paragraph 9 would cause irreparable harm to Buyer for which there would be no adequate remedy at law. Accordingly, Buyer's remedies for a violation of this Paragraph 9 include temporary and permanent injunctive relief in addition to any other relief allowed by law or in equity.

10. **ASSIGNMENT.** Neither this Purchase Order nor any duty or right under it shall be delegated or assigned by Seller, except that Seller's right to payment under this Purchase Order may be assigned to a bank, trust company, or other financing institution, or factoring agency without consent. Seller shall provide Buyer with written notice of assignment at least 14 days prior to the payment due date. Seller will indicate the fact of any assignment on all vouchers. Invoices or requests for payment. Payment to an assignee shall be subject to set-off or recoupment for any present or future claim or claims which Buyer may have against Seller. Buyer reserves the right to make settlements and/or adjustments in price with Seller under the terms of this Purchase Order notwithstanding any assignment. Any assignee will have the same obligation of safeguarding Buyer's Proprietary Information and Intellectual Property as Seller, and Seller shall be responsible for the misuse of Buyer's Proprietary Information and intellectual Property by any assignee.

11. **TERMINATIONS - STOP WORK.** This Purchase Order may be terminated by Buyer for convenience or for default upon five day's written notice by Buyer to Seller. In the event of Buyer's termination for convenience, any claim by Seller for damages for the termination shall not include any cost of design engineering or development, special tooling or special test equipment in any claim for adjustment or damages for termination. **NOTICE: SELLER'S FAILURE TO SUBMIT A CLAIM WITHIN SIX (6) MONTHS FROM THE DATE OF NOTICE OF TERMINATION MAY CONSTITUTE A WAIVER OF ANY CLAIM.**

12. **INDEMNIFICATION.** Seller shall defend, indemnify, and hold harmless Buyer, its officers, employees and agents from any claim, suit, loss, cost, damage, expense (including attorney's fees), or liability by reason of property damage or personal injury (including death) to any person, including Seller's employees, of whatsoever nature or kind arising out of, as a result of, or in the performance of this Purchase Order which are occasioned in whole or in part by the actions or omissions of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier. Seller shall take all precautions necessary, special or otherwise and shall be responsible for compliance with all Federal, state, and local safety and environmental laws in performance of the Purchase Order. Seller and its suppliers and subcontractors at any tier shall maintain public liability and property damage insurance in prudent and reasonable limits covering Seller's obligation in the Purchase Order and shall maintain, to the statutory limits required by law, proper Worker's Compensation Insurance or approved self-insurance program, and employer's liability insurance covering all employees which might have any claim related to Seller's performance of this Purchase Order.

13. **EQUAL OPPORTUNITY, AFFIRMATIVE ACTION FOR HANDICAPPED AND AFFIRMATIVE ACTION FOR DISABLED AND VIETNAM ERA VETERANS.** Unless exempt, all federal and state laws for equal opportunity and affirmative action are applicable to Seller's performance of the terms of this Purchase Order, and Seller certifies compliance by accepting this Purchase Order.

14. **UTILIZATION OF SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS AND WOMEN OWNED SMALL BUSINESSES.** Seller will use its best efforts to ensure that small and small disadvantaged businesses, and women-owned small businesses, as defined in statute or regulation by the Small Business Administration, have the maximum practicable opportunity, consistent with the efficient performance of this Purchase Order, to participate in lower-tier orders issued in the performance of this Purchase Order.

15. **LABOR DISPUTES.** Seller shall immediately give notice to Buyer whenever any actual or potential labor dispute develops or threatens to delay the timely performance of this Purchase Order.

16. **GRATUITIES/KICKBACKS.** At any time Buyer may terminate this Purchase Order without recourse by Seller if Buyer has reasonable cause to believe gratuities (in the form of entertainment, gifts or otherwise) or kickbacks were offered or given by Seller, or any agent or representative of Seller, to any officer or employee of Buyer with a view toward securing this Purchase Order or securing favorable treatment with respect to the award, amendment or performance of this Purchase Order or the making of any determination with respect to the performance of this purchase order. By accepting this Purchase Order, Seller certifies and represents that it has not and will not solicit or offer a kickback.

17. **INTERPRETATION OF ORDER.** If this Purchase Order is placed pursuant to a Government contract, the terms of this Purchase Order and any other Government procurement regulation or statute made a part of this Purchase Order by reference or otherwise, shall be governed by and construed in accordance with the law of Government contracts as set forth by statute and applicable regulations, and decisions by the courts of appropriate jurisdiction. To the extent that the law referred to in the foregoing sentence is not determinative of an issue arising out of this Purchase Order, or if choice of law allows, the terms of this Purchase Order shall be governed by and interpreted in accordance with the laws of the State of Texas.

18. **COMPLIANCE WITH LOCAL, STATE, AND FEDERAL LAW.** Seller agrees to comply with all applicable local, state, and federal laws and executive orders and regulations issued pursuant thereto, and agrees to defend, indemnify and hold Buyer harmless against any loss, cost, damage, expense (including attorney's fees), or liability by reason of Seller's violation.

19. **REMEDIES.** Any of Buyer's rights and remedies referenced in this Purchase Order are cumulative and in addition to any other rights and remedies provided by law or equity. In addition to the ability to terminate this Purchase Order for default, other of Buyer's remedies include suit for consequential and incidental damages for failure to deliver the Supplies as specified, at the time, at the place, or for the cost agreed upon in this Purchase Order, and for attorney's fees and costs of collection all of which remedies may be pursued in a court of appropriate jurisdiction in Johnson County, Texas regardless of Supplier's place of business, and shall be interpreted and enforced in accordance with the laws of the State of Texas.

20. **WAIVER.** The failure of Buyer in any one or more instances to insist on performance of any of the provision of this Purchase Order shall in no way be construed to be a waiver of such provisions in the future.

21. **PAYMENT.** If an invoice is required, payment shall be required no sooner than thirty (30) days after the later of (a) proper delivery of the Supplies or performance of the services specified in this Purchase Order or (b) receipt and approval of a proper invoice.

22. **INDEPENDENT CONTRACTOR.** It is understood and agreed that Seller shall be an independent contractor in all its operations and activities in its performance of this Purchase Order, that the employees furnished by Seller to perform work under this Purchase Order are Seller's employees exclusively without any relation whatever to Buyer as employees, agents, or as independent contractors; that such employees shall be paid by Seller for all services; and that Seller shall be responsible for all obligations and reports covering social security, unemployment insurance, worker's compensation, income tax, and other reports and deductions required by local, state and/or federal law.

23. **OFFSET FOR FINES AND PENALTIES.** If Buyer is fined or penalized as a result of any violation of any Public Law or Federal Regulation by Seller or Seller's lower-tier suppliers, or where this Purchase Order is pursuant to a government, if the Government officer who has cognizance over contract reduces Buyer's prime contract as a result of actions by Seller or Seller's lower-tier suppliers, this price stated in this Purchase Order will be reduced in the same amount of the fine or penalty. If Buyer has already paid Seller, Seller shall refund to Buyer in the amount of the offset within 30 days of Buyer's request for refund.

24. **UNIT SERIALIZATION-CONTROLLER CONFIGURATION ARTICLES.** (Applicable if this Purchase Order has a unit serialization requirement) Units delivered under this Purchase Order shall be serialized with numbers as shown on the face of this Purchase Order, and referenced as CCA serial numbers. Controls shall be provided to assure that no serial number is used on more than one unit and that no unit has more than one serial numbered applied. In the even that a unit with serial number applied is

scrapped, and is to be replaced by a new unit. Seller shall contact Buyer for an additional serial number assignment. Serial numbers shall be applied to each unit prior to shipment in accordance with the design control drawings specified on this Purchase Order. Such unit serial numbers shall appear on all copies of covering shipping documents and invoices.

SPECIAL PROVISIONS FOR "BUY AMERICA"

25. **ACKNOWLEDGMENT OF AMTRAK CONTRACT:** By acceptance of this Purchase Order, Seller acknowledges that Buyer is the recipient of funds allowed under the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA") through AMTRAK and that this Purchase Order is necessitated by Buyer's promised performance under Buyer's contract with AMTRAK (the "AMTRAK Contract"). Seller is aware that Buyer's performance under the AMTRAK Contract includes Buyer's compliance with several federal statutes and the regulations promulgated or adopted thereunder and that Buyer's compliance includes and requires Seller's compliance with the federal statutes and regulations.

26. **APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION SUPPLEMENTARY GENERAL PROVISIONS FOR NONCONSTRUCTION CONTRACTS FUNDED BY THE UNITED STATES THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.** By acceptance of this Purchase Order, Seller acknowledges that Seller has received a copy of the National Railroad Passenger Corporation Supplementary General Provisions for Nonconstruction Contracts Funded by the United States Through The American Recovery and Reinvestment Act of 2009 (the "General Provisions"), that all terms and conditions the General Provisions are applicable to and are made a part of this Purchase Order, and that Seller has and will comply with all terms and conditions of the General Provisions. **BUYER IS UNDER NO OBLIGATION TO ACCEPT DELIVERY AND MAY REFUSE DELIVERY WITHOUT ANY RECOURSE BY SELLER ON ANY GOODS OR SERVICES WHICH ARE NOT CERTIFIED IN WRITING BY SELLER TO BE COMPLIANT WITH THE NATIONAL RAILROAD PASSENGER CORPORATION SUPPLEMENTARY GENERAL PROVISIONS FOR NONCONSTRUCTION CONTRACTS FUNDED BY THE UNITED STATES THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

27. **APPLICATION OF THE BUY AMERICAN PROVISION OF AMERICAN RECOVERY AND REINVESTMENT ACT ("ARRA")** By acceptance of this Purchase Order, Seller acknowledges that Seller has received a copy of 49 U.S.C. §24405(a) (the Federal Railroad Administrations' ["FRA"] Buy America Statute) and 49 C.F.R. §§661.3 and 661.5, (the Buy America Regulations under the Federal Transit Authority ["FTA"] as used as guidance by the FRA) (jointly referred to as the Buy America laws), that all terms and conditions of the Buy America laws are applicable to and are made a part of this Purchase Order, and that Seller has and will comply with all terms and conditions of the Buy America laws. **BUYER IS UNDER NO OBLIGATION TO ACCEPT DELIVERY AND MAY REFUSE DELIVERY WITHOUT ANY RECOURSE BY SELLER ON ANY GOODS OR SERVICES WHICH ARE NOT CERTIFIED IN WRITING BY SELLER TO BE COMPLIANT WITH 49 U.S.C. §24405(a) and 49 C.F.R. §§661.3 and 661.5.**

NOTICE: THE FEDERAL REQUIREMENTS MAY CHANGE AND THE CHANGED REQUIREMENTS WILL APPLY TO THIS PURCHASE ORDER.

28. **ENVIRONMENTAL COMPLIANCE.** Seller shall comply with all applicable federal, state, and local laws, regulations, ordinances, and orders concerning the environment and/or waste disposal. Seller shall dispose of any wastes, including hazardous wastes, generated by Seller, its sub-contractors, or agents (either purposefully or accidentally) in connection with its performance of this Purchase Order in accordance with applicable federal, state, and local laws, regulations, ordinances, and orders, at its sole expense, using its own EPA generator number. In no event shall AMTRAK be identified as the generator of any such wastes. AMTRAK reserves the right to require Supplier to provide to AMTRAK a copy of the results of any tests conducted by or for Buyer on any such wastes and, at AMTRAK's expense, to perform additional tests or examinations of any such wastes prior to disposal.

29. **FAIR EMPLOYMENT PRACTICES; EQUAL OPPORTUNITY.** Supplier agrees to abide by AMTRAK's policy and practice to ensure that all business organization receive fair and equal consideration and treatment without regard to race, color, religion, sex, disability, veteran status or national origin of the owners or principals of the business organization. In addition, Supplier agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, veteran status or national origin and that it will comply in all respects with the Americans with Disabilities Act, 42 U.S.C. §12101 et. Seq. Supplier will take affirmative action to ensure that applicants and employees are treated fairly without regard to their race, color, religion, sex, disability, veteran status or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Supplier agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this section. Supplier will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Buyer's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. **This Purchase Order may be canceled, terminated, or suspended in whole or in part based on Seller's failure to comply with this section.**