

# COMET RAIL PRODUCTS, INC

## STT Standard Terms and Conditions

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE SALE OF PRODUCTS AND SERVICES (COLLECTIVELY CALLED "PRODUCTS") OFFERED BY COMET RAIL PRODUCTS (HEREINAFTER CALLED "COMET") FOR THE CONSIDERATION SPECIFIED IN THE ACCOMPANYING QUOTATION OR CONTRACT. THESE TERMS AND CONDITIONS ARE HEREBY INCORPORATED BY REFERENCE INTO ANY QUOTATION OR CONTRACT (ALL COLLECTIVELY REFERRED TO AS THE "CONTRACT") AND SHALL TOGETHER WITH ANY ADDITIONAL TERMS AND CONDITIONS SET FORTH IN THE ACCOMPANYING QUOTATION OR CONTRACT, REPRESENT THE GOVERNING TERMS AND CONDITIONS, NOTWITHSTANDING ANY CONTRADICTORY, MODIFYING OR ADDITIONAL TERMS OR CONDITIONS THAT MAY BE CONTAINED IN A BUYER'S REQUEST FOR QUOTATION, PURCHASE ORDER, OR OTHER DOCUMENTATION. BUYER'S ACCEPTANCE OR OPERATIONAL USE OF ANY PRODUCTS DELIVERED BY COMET SHALL CONSTITUTE THE BUYER'S FULL ACCEPTANCE OF THESE TERMS AND CONDITIONS. SHOULD BUYER NOT ACCEPT THESE TERMS AND CONDITIONS, COMET REQUIRES THAT THE PRODUCTS BE PROMPTLY RETURNED TO COMET FOR CREDIT AS MAY BE APPLICABLE.

### 1. Prices

COMET's offer is subject to adjustment in price and delivery schedule in the event that different quantities or other specifications are required than are set forth in the offer. Prices are subject to change due to the imposition by any lawful taxing authority of any additional tax, levy, assessment or other burden on, or related to the goods or services proposed. Unless otherwise specified, this offer is valid for sixty (60) days from the date of submission.

### 2. Payment Terms and Remit To Addresses

Except as otherwise set forth in the offer, prices are in US dollars, invoices shall be sent to the Buyer upon shipment of goods and payment is due within 30 days after the invoice date Partial deliveries shall be allowed. Late payments will be subject to an interest charge of 1% of the unpaid balance per month, accruing from the 31st day. If Buyer fails to make any payment to COMET as required, COMET shall have the right exercisable at COMET's sole discretion, in addition to its other rights and remedies, to cease further performance. COMET shall have a lien upon and may retain or repossess any and all deliverables if Buyer does not make full payment to COMET when due.

Except as otherwise set forth in the offer, payments shall be made in US Dollars and shall be remitted to the address shown on the invoice.

### 3. Acceptance By Buyer

Except as otherwise set forth in the offer, the Products and services delivered under the Contract shall be deemed accepted at the time they are delivered, in accordance with Article 9, or when services are rendered. Buyer shall notify COMET in writing within 10 days of receipt by COMET of the Products and/or services of any claim for shortage or failure of the Products and/or services to meet the requirements set forth in the Contract.

#### **4. Force Majeure**

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under the Contract to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God; acts of a public enemy; fires; floods; power outages; wars; contagious illness or disease provoking government-imposed quarantines; prohibitions on travel or restrictions on commerce; civil disturbances; sabotage; terrorism; accidents; insurrections; blockades; embargoes; storms; explosions; labor disputes; failures of common carriers; Internet Service Providers; or other communication devices; acts of cyber criminals, acts of any governmental body whether civil or military, foreign or domestic; failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits; and/or inability to obtain labor, materials, equipment or transportation. Any such delays shall not be a breach of or failure to perform the Contract or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

#### **5. Buyer Furnished Items (BFI)**

Buyer shall provide the BFI as outlined in COMET's offer. The BFI shall be in a form and condition acceptable for its intended use as determined by COMET. Buyer warrants that Buyer has the rights to provide any such BFI under the Contract. Should the BFI be inaccurate, inadequate or not in a condition for its intended use or not be provided in accordance with the Contract schedule, COMET reserves the right to adjust price and/or delivery schedule.

#### **6. Delivery**

Except as otherwise set forth in the offer, all goods to be delivered to locations in the United States shall be shipped FOB Origin and for all international deliveries CPT arrival port per Incoterms 2000. If requested, shipping and handling charges will be prepaid by COMET and invoiced to the Buyer. Title and risk of loss shall transfer to the Buyer upon delivery to the first common carrier.

If the Buyer is unable to accept delivery, at no fault of COMET, at the delivery time specified in the contract, the Buyer shall authorize COMET in writing to ship the Products in place at COMET's facility, or other mutually agreed upon location, and will acknowledge acceptance of the Products including title, risk of loss, and commencement of warranty. In this event, all remaining payments will be due and payable in full.

#### **7. Proprietary Information**

The design, production and operation of the Products, in any form, are proprietary information and trade secrets of COMET. Buyer agrees that it will keep in confidence and prevent the disclosure to any unauthorized person or persons, any and all proprietary or confidential information related to the Products that is disclosed to Buyer pursuant to this Agreement. Buyer shall not modify, reverse engineer, improve or otherwise change any Products or parts thereof, or any of COMET's proprietary rights related thereto, and shall not use, incorporate or in any way use any of COMET's proprietary rights or confidential information (whether disclosed separately or embodied in any of the Products) in Buyer's own products or business activities. Buyer acknowledges that, in the event of Buyer's breach of any of the foregoing provisions, COMET will not have an adequate remedy in money or damages and that COMET shall therefore be entitled to seek preliminary or permanent injunctive relief, against such breach from any court of competent jurisdiction. COMET's right to obtain such injunctive relief shall not be construed as any limit of its right to seek further legal and equitable remedies.

## **8. Intellectual Property Rights**

Buyer acknowledges that all rights to and goodwill associated with any trademarks related to the Products (the "Marks") belong to COMET.

Buyer agrees that it will not challenge or attack COMET's rights in any Marks, and will not take or fail to take any action which, by taking or failure to take such action, has a result of impairing such rights of COMET, will not use the Marks on goods or services other than to identify the Products, and will not do anything else inconsistent with the rights of COMET.

## **9. Publicity**

Buyer shall not use COMET's name or any trademarks relating to the Products in any publicity or advertising campaign without the prior written permission of COMET. Upon execution of this Agreement, either Party may issue a press release regarding the subject matter of this Agreement upon receipt of written approval of that press release from the other party.

## **10. Assignment**

The Contract is not assignable without the prior written consent of COMET. Any attempt by the Buyer to assign any of the rights, duties or obligations of the Contract without such consent shall be null and void.

## **11. Notices**

All notices required or permitted under the Contract shall be in writing and shall be deemed to have been given upon personal delivery, upon receipt of delivery service or courier transmittal, or upon facsimile to the party with confirmation of transmission received.

## **12. Indemnification**

Buyer and End User each shall assume full and exclusive responsibility for use of the Products after the first to occur of delivery or acceptance. Buyer and End User shall indemnify, defend and hold COMET harmless from all claims, actions, damages, expenses, liabilities and losses, regardless of the legal theory, including but not limited to breach of contract, warranty, negligence, strict liability, statutory or regulatory liabilities or other tort, including without limitation attorney's fees and court costs, incurred that in any way arise out of or relate to: (a) improper installation, the maintenance, modification or operation of the Products, including without limitation by Buyer or any of its customers or end users; (b) defects or other deficiencies with any component parts, equipment, manufactured, assembled, distributed, resold or supplied by any person or entity other than COMET that are incorporated into or used in any way with the Products; (c) any amount in excess of the limit of COMET's liability to Buyer set forth in Article 17, Limitation of Liability, of the COMET Standard Terms and Conditions that COMET is required to pay in respect of claims arising out of or relating to the Contract; and/or (d) any transaction Buyer enters into or engages in with any party other than COMET, including any customers, end users or other parties involving or relating to the Products.

## **13. Limitation of Liability**

COMET's total liability to Buyer and all liabilities arising out of or relating to the Contract, from any cause or causes asserted by Buyer/End User or any other third party, and regardless of the legal theory asserted, including but not limited to, breach of contract, warranty, negligence, strict liability, or statutory or regulatory liability, shall not, in the aggregate, exceed the amounts actually paid to COMET under the Contract, or under the specific delivery order at issue, whichever is less.

In no event shall either party be liable to the other for any special, indirect, incidental, consequential, punitive, exemplary or economic damages (including, but not limited to lost profits and lost business opportunity) arising out of or relating to the Contract, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.

Any claim by Buyer/End User relating to the Contract, other than in warranty, must be made in writing and presented to COMET within one year after the earlier of: (1) the date on which Buyer accepts the deliverable at issue; or (2) the date on which COMET completes performance of the services specified in the Contract. Any claim under warranty must be made within the time specified in the applicable warranty clause.

#### **14. Taxes (Applicable to goods and services delivered or performed in the U.S.A.)**

The prices set forth herein do not include sales, or use taxes or gross receipts taxes or other applicable state or local government taxes which may be applicable to the goods and/or services delivered hereunder. Unless COMET receives a sales tax certificate which exempts the goods and/or services from such taxes, COMET shall invoice and Buyer shall reimburse COMET for the tax in addition to the stated prices set forth herein.

#### **15. Taxes and Duties (Applicable to goods and services delivered or performed outside the U.S.A.)**

- A. The Contract price, including the prices in any subcontracts, does not include any taxes, including VAT, GST, withholding taxes, duties, assessments, liens, or similar charges levied upon COMET by an entity other than the U.S. government or a political subdivision thereof (hereinafter "Foreign Taxes"), which could be incurred by COMET as a result of the Contract. If COMET, its subcontractors, or their respective employees are required to pay any Foreign Taxes, or any penalties and/or interest assessed with respect to Foreign Taxes (hereinafter "Foreign Penalties") the Contract price shall be correspondingly increased to reimburse COMET for the full amount of Foreign Taxes or Foreign Penalties. If COMET, its subcontractors, or their respective employees are required to file a return or report with respect to any Foreign Taxes, the Contract price shall be correspondingly increased to reimburse COMET for the full cost to prepare and file any such return or report ("Foreign Return Charges"). If no further payments are due to COMET under the Contract, Buyer shall reimburse COMET for all Foreign Taxes, Penalties and Return Charges within 30 days of receiving an invoice for such amounts from COMET.
- B. If COMET is required to collect VAT or similar sales or use taxes, COMET will charge Buyer such amount as a separate item on its invoice or provide a separate invoice if no further invoices are issued under the contract. If COMET is not registered to collect VAT or similar taxes, Buyer will pay such amounts directly to the taxing authority.
- C. If after the effective date of the Contract, there are any changes or developments which may result in an increase in any foreign taxes, and/or any new foreign taxes or assessments are levied, or if the methods of administering or the rates of any foreign taxes and assessments are changed, and such new taxes, assessments, or changes result in an increased potential tax liability of COMET, its subcontractors or their respective employees financial responsibility hereunder, the Contract price shall be correspondingly increased.

#### **16. Import/Export Regulations**

- A. (Applicable for sales to Buyers and/or shipments outside the United States) Buyer agrees that COMET's performance under the Contract is subject to all of the required and continuing United States (U.S.)

Government approvals, clearances, regulations, and export licenses. In the event COMET is unable to obtain or maintain any required approvals, clearances and/or export or import licenses, COMET shall be excused from its obligation to provide those goods or services set forth in the Contract for which such approvals, clearances and/or export or import licenses are required.

Commodities will be exported in accordance with U.S. export regulations, including but not limited to the International Traffic in Arms Regulations, the Export Administration Regulations, the regulations promulgated by the U.S. Department of Treasury and all other applicable U.S. laws and regulations (collectively, the "export regulations"). Diversion contrary to U.S. law is prohibited. The commodities may not be resold, transferred, transshipped or re-exported without prior authorization by the U.S. Government.

- B. (Applicable to U.S. Buyers who intend to export shipments outside the U.S.) COMET's hardware, software, and technical data, as defined by the U.S. Government are subject to the U.S. export regulations. Direct or indirect exportation/transfer contrary to U.S. law is prohibited. Buyer assumes all responsibility for securing commodity classifications, export licenses, shipment, and record keeping in accordance with applicable export regulations of the U.S. Government.
- C. Resale and Re-Export of Products. Buyer acknowledges that: a) any commodities and/or technical data consisting of or contained in Products provided subject to these terms are of U.S. and subject to the U.S. export regulations; b) that all sales of Products hereunder are routed transactions within the meaning of the U.S. export regulations; and c) that any export or re-export thereof must be in compliance with the U.S. export regulations. Buyer agrees that it shall not export or re-export, directly or indirectly any commodities and/or technical data (or direct products thereof) ordered subject to these terms in any form to (i) destinations in Country Group E:2, as specified in Supplement No. 1 to Part 740 of the EAR as modified from time to time by the U.S. Bureau of Industry and Security, (ii) destinations that are otherwise controlled or embargoed under U.S. export regulations or (iii) entities or individuals which are listed on prohibited lists such as the Table of Denial orders maintained pursuant to such laws or regulations.

## **17. Changes**

COMET may suggest or Buyer may request changes within the scope of the Contract and applicable specifications. Should any such suggested changes cause an increase or decrease in the purchase price, or in the delivery or affect any other Contract provisions, COMET shall submit a proposed adjustment to the purchase price, schedule and/or any other provision affected by the change. Upon reaching a mutual agreement in writing thereto, COMET shall proceed with such change.

## **18. Termination or Cancellation**

- A. Termination: Either party may only assert that the Contract is terminated for default pursuant to a material breach by the other party. In all such cases, the breaching party shall be afforded a reasonable period of time to remedy such material breach, but in any event not less than 30 days from the date

that the breaching party receives a written cure notice from the asserting party specifying the nature of the breaching party's failure to comply with a material provision of the Contract.

- B. Cancellation: Cancellation of the Contract or any part thereof shall result in a restocking fee to be charged to Buyer equal to 30% of the full purchase price of the cancelled items, no credit will be given for non-stock or custom materials or labor related charges. Cancellation will be honored only within thirty (30) calendar days from Contract placement. COMET will submit an invoice for the restocking fees and Buyer shall remit payment for such restocking fees within 30 days after receipt of invoice. Credits due Buyer for prior amounts paid against cancelled items shall be applied to future payments due by Buyer, or reimbursed

by COMET within thirty (30) days of receipt of Buyer's invoice or credit notice, if no future payments are due.

## **19. Warranties**

Items reconditioned or repaired by Comet Industries are warranted to be free from defects in workmanship and new replacement parts under normal and proper use and service for a period of twelve (12) months from the date of original repair or reconditioning (or for a shorter period if, and to the extent, third party replacement part manufacturers warranties are shorter than one year) (the "Warranty Period") subject to tolerances and variations consistent with usual industry practices, unless otherwise specified by contract or covered under separate policy.

Comet Industries shall not be liable or responsible with respect to any item or design for performance under conditions varying materially from those engineered by the OEM or outside influences not stated by the OEM. Comet Industries shall have no obligation with respect to any goods that have been subjected to abuse, misuse, improper maintenance or operation or abnormal conditions.

In the event of any breach of this Warranty Policy during the Warranty Period, Customer's sole and exclusive remedy shall be to return the item or new part freight paid to 2405 Nicholson Avenue, Kansas City, MO 64120 for and at Comet Industries' option, repair, recondition or replace the item or new part without charge, provided such breach has been reported to Comet Industries within the Warranty Period. The foregoing action constitutes Customer's sole and exclusive remedy for breach of this Warranty Policy. Without limiting the generality of the foregoing, (1) Comet Industries shall not be responsible for any incidental, special or consequential damages, including without limitation, lost profits or the cost of repairing or replacing other property that is damaged if the item or new part does not work properly, other costs resulting from labor charges, delays, vandalism, negligence, fouling caused by foreign material, damage from adverse water conditions, chemicals, or any other circumstances over which Comet Industries has no control, and (2) this Warranty Policy shall be invalidated by any abuse, misuse, misapplication or improper installation, opening or altering of the item or new part.

THIS WARRANTY POLICY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING (i) ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH IMPLIED WARRANTIES ARE DISCLAIMED, AND (ii) ANY WARRANTIES IMPLIED FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. COMET INDUSTRIES' AGGREGATE LIABILITY UNDER THIS WARRANTY POLICY SHALL NOT EXCEED THE AMOUNT PAID TO COMET INDUSTRIES FOR THE ITEM OR NEW PART IN QUESTION.

## **20. Modifications, Complete Agreement**

No modifications of these Terms and Condition shall be effective unless in writing and signed by authorized representatives of the parties. The Contract constitutes the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Contract.

COMET's proposal and these Terms and Conditions shall be included in the Contract by reference.

## **21. Applicable Law and Disputes**

A. The Contract shall be interpreted, construed and governed by, and the relations between the parties determined by the laws in force in the State of Missouri, United States of America.

B. Should any disputes or differences of any kind arise between the Buyer and COMET, in connection with

or arising out of the Contract, or the performance hereunder, these will be settled by mutual agreement, which after having been written and signed by both parties, will become final and binding upon both Parties.

- C. If no binding agreement can be reached, then the Buyer and COMET will have the right to proceed to resolve the dispute through arbitration as follows: (1) For Buyers within the United States, arbitration shall be conducted according to the Rules of the American Arbitration Association ("AAA") before one or more arbitrator(s) appointed in accordance with such rules; (2) For Buyers outside the United States, arbitration shall be conducted under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s) appointed in accordance with such rules. The Arbitrator's decision will be final, binding and irrevocable upon both the Buyer and COMET and not subject to any direct or indirect legal means. Arbitration shall take place in Kansas City, Missouri, United States of America.
- D. The judgment rendered by the Arbitrator upon the award may be entered in any court having jurisdiction for the purposes of obtaining an order of enforcement or judicial acceptance of the award, as the case may be. Buyer and COMET hereby waive any immunity, sovereign or otherwise, that it would otherwise have to such jurisdiction and agrees that its rights, obligations and liabilities hereunder shall be determined in the same manner and to the same extent as those of a private litigant under like circumstances.
- E. The Arbitrator's award may include compensatory damages against either party, but under no circumstances will the Arbitrator be authorized to nor shall he or she award consequential, special, punitive or multiple damages against either party.

## **22. Severability**

If any provision of the Contract is held by a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

## **23. Order of Precedence**

In the event of a conflict arising between the documents constituting a formal offer or quotation, the following descending order of precedence shall be given: (a) the formal quotation to which these terms are attached; (b) these terms and conditions; and (c) and the Statement of Work or specification referenced or attached hereto; (d) any other attachments.

## **24. Right of Approval**

Acceptance of any order stemming from this quotation is contingent on disclosure by the Buyer of all parties to the transaction, including the Buyer, intermediaries and end users who will bear interest, title or operational authority over the equipment at every stage. Such additional parties shall be subject to due diligence and approval by COMET, at its sole discretion.

## **25. Survival**

The provisions of paragraphs 9, 10, 11, 12, 14, 17 and 19 above shall survive termination, cancellation or expiration of the Contract.