

RAILSERVE, INC. EQUIPMENT PURCHASE TERMS AND CONDITIONS FOR THE RAILSERVE LEAF® LOCOMOTIVE

Effective January 1, 2015

1. **PURCHASE OF EQUIPMENT.** Railsolve shall sell to Buyer, and Buyer shall purchase from Railsolve, Equipment as documented and agreed upon by the parties. Both parties agree to execute an Agreement including these Terms and Conditions.

2. **PRICE AND PAYMENT TERMS.**

a. **Equipment Price and Payment Terms.** The total purchase price for the Equipment will be determined based on the Buyers specification and both the purchase price and the specification will be documented in the Agreement. Contemporaneously with execution and delivery of the Agreement, Buyer shall pay 50% of entire Purchase Price in immediately available funds via wire transfer pursuant to instructions set forth in the agreement. The final 50% will be paid in like manner prior to shipment of the Equipment as described in section 3.

b. **Taxes.** In addition to the other fees and charges due under the Agreement, Buyer shall pay all taxes resulting from the sale, use or transportation of the Equipment, except for taxes based on Railsolve's net income.

3. **DELIVERY; ACCEPTANCE; TITLE; RISK OF LOSS; TRANSPORTATION.**

a. **Delivery.** The Equipment shall be delivered and made available to Buyer at Seller's facility in Longview, TX (the "Delivery Location") on a date selected by Railsolve upon at least 15 days written notice to Buyer or such other date as the parties may agree (the "Delivery Date").

b. **Acceptance.**

i. **Inspection.** Buyer shall have the opportunity to inspect the Equipment for the purpose of determining whether the Equipment operates in forward and reverse and provides tractive effort equivalent to a switching locomotive. Such inspection will be performed on the Delivery Date at the Delivery Location under the supervision of Railsolve representatives. If the Equipment fails to pass acceptance inspection, Railsolve shall promptly correct the deficiency(ies) at its expense and Buyer shall be granted an additional opportunity to inspect the Equipment, which inspection shall occur within three business days of the date on which Railsolve provides Buyer notice that it has corrected the deficiency(ies) identified in the initial inspection. If the Equipment passes either the initial or subsequent inspection or Buyer elects not to undertake an inspection of the Equipment, Buyer shall execute an Acceptance Certificate (in a form acceptable to Railsolve) and the Equipment shall be deemed accepted by Buyer.

ii. **Failure to Timely Inspect.** In the event Buyer does not undertake an inspection on the Delivery Date or within three business days of the date on which Railsolve provides Buyer notice that it has corrected the deficiency(ies) identified in the initial inspection, Buyer shall be deemed to have waived its inspection right hereunder and the Equipment shall be deemed accepted without the need for execution of an Acceptance Certificate.

iii. **Acceptance Date.** The date on which acceptance occurs in accordance with this Section 3.b shall hereinafter be referred to as the "Acceptance Date."

c. **Title; Risk of Loss.** On the Acceptance Date, Railsolve shall execute and deliver to Buyer a Bill of Sale, at which point title to the Equipment shall pass to Buyer. Notwithstanding the transfer of title as described in the foregoing sentence, risk of loss for the Equipment shall pass to Buyer on the date on which Railsolve sets out the Equipment in anticipation of Union Pacific Corporation picking up the Equipment for dead in tow shipment.

d. **Transportation.** All costs associated with the dead in tow shipment of the Equipment shall be borne by Buyer.

4. **RAILSERVE LIMITED WARRANTY.**

a. **Title.** Railsolve warrants that the title to the Equipment conveyed hereunder shall be good and marketable, and that the Equipment will be delivered free and clear of all liens, claims and encumbrances.

b. **Limited Warranty.** Railsolve warrants to Buyer that the following components of the Equipment (the "Warranty Components") will be free from defects in material and workmanship for a period of twelve (12) months following the Acceptance Date:

- i. Cummins Diesel Gen Set
- ii. EPA emission Tier III under CFR 1068.204
- iii. Traction Motor Control System
- iv. IFM Logic Controller

c. Further Railsolve warrants to Buyer that all other parts of the Equipment with the exceptions of consumables such as oil, brake shoes, light bulbs and wipers repaired or replaced by Railsolve (the "Warranty Components") will be free from defects in material and workmanship for a period of twelve (12) months following the Acceptance Date. Warranty does not include normal wear and tear associated with routine operation of the Equipment nor does it include any damage caused by Buyer or third parties.

d. **Disclaimer and Limitation of Warranty.** THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

e. **Repair and Replacement Remedy.** If within the warranty period, any of the Warranty Components shall be proved to Railsolve's satisfaction to be non-conforming to the express warranties set forth in this Agreement, such Warranty Component(s) shall be repaired or replaced at Railsolve's option and expense. The foregoing shall be Buyer's sole and exclusive remedy as to non-conforming Warranty Components. This Limited Warranty shall be void if, in Railsolve's sole and exclusive determination, the goods are in any way subjected to: (i) improper installation or storage; (ii) lack of proper maintenance and service; (iii) accident, damage, abuse or misuse; (iv) abnormal operating conditions or applications; (v) repair or modification by Buyer or any third party without the prior written consent of Railsolve; (vi) operating conditions or applications above the rated capacity of the goods; (vii) use under operating conditions or applications not made known to or contemplated by Railsolve at the time of delivery to Buyer; or (viii) any other abnormal operation.

f. **Other Parts of Equipment.** Other than the Warranty Components, Railsolve provides no warranty of any kind with respect to any other part or component of the Equipment or with regard to the Equipment as a whole, all of which is sold and purchased "AS IS, WHERE IS" by Buyer.

g. **Limitation of Liability.** In no event shall Railsolve be liable to Buyer for consequential, indirect, special, incidental, punitive or similar damages.

h. **Indemnification.** As partial consideration for the transfer of the Equipment to Buyer, Buyer hereby waives any claims that it, or anybody claiming through it, may have against Seller which relate to or in any way arise out of any use or possession of the Equipment after the date hereof. Further, Buyer agrees to defend, indemnify, and hold Seller, and its officers, employees, and representatives, harmless from and against all costs and expenses (including attorney's fees) which Seller may suffer or become liable to pay which relate to or in any way arise out of the use of the Equipment after the date hereof, whether by Buyer or anyone else, and including (but not limited to) claims for bodily injury or property damage, except if such injury or damage is caused by the sole negligence of Seller.

5. **MISCELLANEOUS.**

a. **Governing Law.** These Terms and Conditions and the Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to any conflict of laws provisions.

b. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if made in writing and deposited in the mail, postage prepaid, registered, or certified mail, and addressed to the other party at the address set forth in the preamble above.

c. **Severability.** The invalidity, illegality, or unenforceability of any provisions of these terms or the Agreement shall not affect the validity, legality, or enforceability of any other provisions of the Agreement, which shall remain in full force and effect.

d. **Assignment.** Buyer may not assign the Agreement in whole or in part whether by way of assignment, operation of law or otherwise without the prior written consent of Railsolve. Any assignment or transfer or attempt to do so by Buyer without such consent shall be considered void and no other force or effect.

e. **Counterparts.** The Agreement may be executed in multiple counterparts all of which taken together constitute one and the same instruments. A signed counterpart is as binding as an original.