

Cuyahoga Valley Scenic Railroad – Standard Terms and Conditions

Revised: 01/01/2017

1) **ACCEPTANCE** This Purchase Order supersedes all prior communications and agreements and represents the entire agreement between the Buyer and Seller. This Purchase Order becomes a binding contract upon the terms and conditions set forth herein by Seller's acknowledgment or Seller's commencement of performance. Notwithstanding any conflicting or different terms and conditions in any quotation, proposal or acceptance of Seller, no change, modification or revision to this Purchase Order shall be valid or binding unless in writing and signed by the Buyer.

This Purchase Order, and the word "Items" herein, insofar as applicable, refers to goods and/or services furnished under this order.

2) **ADVERTISING** Seller shall not without first obtaining the written consent of Buyer, advertise, publish, or disclose any of the facts of, or the details connected with this Purchase Order to any third party except as may be required to perform this Purchase Order.

3) **ASSIGNMENT** Neither this Purchase Order nor any of the sums due or to become due nor any other interest herein is assignable by Seller, voluntarily or involuntarily, nor shall any subcontract be made with or other delegation of duties be made to any other party for the furnishing of any complete or substantially complete items without Buyer's prior written consent.

4) **BUYER'S PROPERTY** Buyer shall retain title to all property used by Seller, but owned, furnished, charged to or paid for by Buyer, and any replacement thereof. All such property shall be retained by Seller on consignment, suitably identified and marked as Buyer's property and shall be used only to fill Buyer's orders. Seller shall hold and maintain any of the above described property at its risk and expense and shall keep such property insured at its expense while in its custody or control in an amount equal to the replacement cost thereof with loss payable to Buyer. Seller shall return any such property to Buyer upon demand in the original condition. Consumables and reasonable wear and tear accepted.

5) **CHANGES** Buyer shall have the right at any time to make changes in this order. No changes shall be effective unless authorized in writing by Buyer. If such changes result in delay or an increase or decrease in expense to Seller, Seller shall notify Buyer immediately and negotiate an equitable adjustment, provided, however, that Seller shall in all events, proceed diligently to furnish the items contracted for under this Purchase Order as so changed. No claim by Seller for such equitable adjustment shall be valid unless submitted to Buyer in writing within 30 days from the date of such change notice, accompanied by an estimate of charges resulting from said changes. Buyer may, in addition, issue a written stop work order with which Seller shall fully comply, and Seller shall be excused from proceeding with the work as changed only so long as such stop work order remains in effect.

6) **COMPLIANCE WITH LAW** In the performance of this order, Seller shall comply with all applicable Federal, state and local laws, ordinances, rules, orders, and regulations.

7) **INDEMNITY** Seller shall indemnify and hold harmless Buyer, its successors, assigns or customer, from and against any claims, liability, loss and damage, including without limitation costs, expenses and attorneys' fees arising out of or relating to this order or the items furnished hereunder, or any claim or litigation based thereon, including claims or liabilities arising out of or in connection with any infringement by the items furnished hereunder of any patent, copyright or other proprietary right, except if such liability, loss and damage is due solely and directly to the fault or negligence of Buyer or its customers and Seller, if requested to do so shall defend, at its own expense, any such litigation.

8) **DELAY OR NON DELIVERY** Neither party shall be liable for delays or defaults due to causes beyond its control and without its fault or negligence, provided however, that when Seller has reason to believe deliveries will not be made as scheduled, it shall give prompt notice to Buyer of the cause of the anticipated delay. Time is of the essence in the supply of items by Seller pursuant to this order. If delivery is not completed by the time specified on the face hereof, or if no time is specified within a reasonable time, or if a material or indefinite delay in performance of this Purchase Order occurs, Buyer shall have the right to cancel and purchase elsewhere and, except where non-delivery is due to excusable causes as provided above. Seller shall be responsible for any damages thereby suffered by Buyer, its successors, assigns or customers.

9) **DRAWINGS, SPECIFICATIONS AND TECHNICAL INFO.** Drawings, data, designs, inventions and other technical illustrations supplied by Buyer shall remain Buyer's property and shall be held in confidence by Seller. Such information shall not be reproduced, used or disclosed to others by Seller without Buyer's prior written consent and shall be returned to Buyer, together with any copies upon completion of the Purchase Order or upon demand. Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the items covered by this Purchase Order shall be deemed to have been disclosed as part of the consideration of this Purchase Order and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof.

10) **INSPECTION AND REJECTION** Seller expressly warrants that all items delivered hereunder shall conform to the specifications and drawings set forth in this contract and to Buyer's samples, if any, and shall be free from defects. Seller shall permit Buyer's representatives to have access to Seller's plant at all reasonable hours for the purpose of inspecting any items covered by the Purchase Order or work in process or production. Notwithstanding any earlier inspection, all items ordered will be subject to final inspection and approval at Buyer's facility or other facility designated by Buyer, or, if services at the site of such services. If any of the items are found at any time to be defective in design, material or workmanship, unsuitable for intended purposes, or otherwise not in conformity with the requirements of this order, Buyer shall have the right to reject and return at Seller's risk and expense, or to hold such items for Seller's instruction at Seller's risk and expense or, in the case of services to have such services performed anew by Seller at no cost or expense to Buyer such items not to be replaced or re-performed without authorization from Buyer. If any installment shipment fails to conform to the delivery schedule or other requirements of this order, Buyer shall have the right to reject future shipments and reject and return shipments already accepted under this order at Seller's risk and expense. Buyer reserves the right to charge to the Seller any cost of inspection and tests when goods rendered for final

inspection and acceptance do not comply with the requirements of this Purchase Order.

11) **TERMINATION** Buyer shall have the right to terminate this Purchase Order or any part hereof at any time by giving telegraphic or other written notice of such termination to Seller, as follows:

a) **Without Cause** In case of termination by Buyer of all or any part of the Purchase Order without cause, any termination claim by Seller must be submitted to Buyer within sixty (60) days after the effective date of termination. Buyer may audit all elements of any terminated claim.

b) **With Cause** If Seller fails to make any delivery in accordance with the agreed delivery date or schedule or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this Purchase Order or fails to make progress so as to endanger timely performance of the Purchase Order or in the event of any proceedings by or against Seller under bankruptcy or insolvency laws, or laws for the reorganization or rehabilitation of a debtor, or if a receiver or trustee is appointed, or an assignment for the benefit of creditors is made, Buyer may in addition to any other right or remedy provided by this Purchase Order, or by law, terminate all or any part of this Purchase Order without any liability by Buyer to Seller. In the event of termination for cause, Buyer may produce or purchase or otherwise acquire supplies or services elsewhere on such terms or in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer in acquiring such alternative supplies or services.

12) **Risk of Loss** Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Buyer, and delivery shall be deemed to be complete only upon actual receipt and acceptance of the items by Buyer or its customers. Risk of loss or damage as to items rejected by Buyer, or as to which acceptance has been revoked, shall be upon Seller.

13) **Warranty** Seller warrants that the items supplied are merchantable, of good quality, strictly comply with specifications, drawings and data submitted to or by Buyer in connection with this order are free from defects, whether patent or latent, in design, material and workmanship and are suitable for the particular use for which the items are purchased. Seller further warrants that it has good title to the items and that they are free and clear of all liens and encumbrances. Such warranties, together with service warranties, guarantees and other express warranties shall run in favor of Buyer, its successors and assigns, customers and subsequent owners of the items or end products of which items are a part and shall survive any inspection, delivery, acceptance or payment of and for the items. Notice of breach of warranty shall be deemed reasonable and sufficient if given within ninety (90) days after actual discovery.

14) **Setoff** Buyer shall be entitled at all times to setoff any amount owing from Seller to Buyer against any amount payable hereunder by Buyer whether or not arising under this contract.

15) **Special Tools** Seller agrees that all special tooling, the price of which is itemized separately herein, shall become the property of the Buyer upon payment therefore unless otherwise agreed to in writing.

16) **Waiver** The failure of Buyer to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of this contract, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the right to compel future performance of any such terms, covenants or conditions or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.

17) **For Work on Buyer's or its Customer's Premises** If Seller's work under the Purchase Order involves operations by Seller on the premises of Buyer or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work, and except to the extent that any such injury is due solely and directly to Buyer's or its customer's negligence, Seller shall indemnify Buyer against all claims, loss, damage and liability which may result in any way from any act or omission of the Seller, its agent, employees or subcontractors and Seller shall maintain Public Liability, Property damage and Employee's Liability and Compensation Insurance as will protect Buyer from said risks and from any claims under any applicable workmen's compensation acts.

18) **Remedies** The remedies expressly provided for in these conditions shall be in addition to any other remedies which Buyer may have under the Uniform Commercial Code or other applicable law.

19) **Invalidity** If any provisions herein or portions thereof conflict with any statute or rule of law of the jurisdiction of applicable law or wherein this contract may be sought to be enforced, then such provisions or portions thereof shall be deemed void to the extent that they may so conflict, but without invalidating the remaining portions of such provisions or other provisions hereof.

20) **Headings** Section headings contained herein are for the purpose of convenience only and are not intended to be a part, nor to be used for purposes of interpretation of the text hereof.

21) **Legal Construction and Interpretation** This Purchase Order and the performance hereunder shall be construed and interpreted solely in accordance with the laws of the State of Ohio.

By signing, the seller acknowledges that the Terms and Conditions of this form have been read and understood.

Authorized Signature Date

Print Name Title