

TERMS AND CONDITIONS OF SALE

DEFINITIONS

The term "Buyer" shall mean the person, firm or corporation for whom goods described hereon are to be furnished.

The term "Seller" shall mean Loram Maintenance of Way, Inc. a Minnesota corporation.

The term "Goods" shall mean Top-of-Rail units to be delivered or services to be performed herein.

1. **DELIVERY:** Unless otherwise agreed, Seller will fulfill its obligation to deliver when the Goods are made available to Buyer at Seller's premises, "EX WORKS", Bensenville, IL, as defined by Incoterms 2010. Unless otherwise agreed, Seller will fulfill its obligation to deliver when the Friction Modifier is made available to Buyer at Seller's premises, "EX WORKS", Canton, OH, as defined by Incoterms 2010. Seller is not responsible for loading the Goods or Friction Modifier on the mode of transportation provided by Buyer or for clearing the Goods or Friction Modifier for export. The Buyer bears all costs, including inspections and risks involved in taking Goods or Friction Modifier from Seller's premises to the desired destination. Any other term negotiated or utilized is per Incoterms 2010.
2. **PRICE:** The price shall be specified by Seller's service parts pricing catalog (or on the face of this invoice). The prices shown herein are subject to an additional charge to cover any existing or future sales, use or similar tax, or assessment and all customs duties, import and export fees and similar levies which may be applicable except where Buyer properly furnished appropriate certificates of exemption therefrom. All such taxes and charges shall be shown separately on Seller's invoice. Prices, quotations, specifications and other terms and all statements appearing in the Seller's service parts pricing catalog and otherwise made by Seller are subject to change without notice.
3. **MOST FAVORED CUSTOMER CLAUSE:** Seller warrants for 30 days that it will sell its goods of the kind and specifications covered by this order to Buyer for the same price as Seller's other customers; provided however, that Buyer's orders are of comparable quantity; impose comparable inspection, transportation and packaging charges; and levy comparable excise, sales, use or similar tax, customs duties, import and export fees on Seller's other customers.
4. **RISK OF LOSS:** Risk of loss of the Goods or Friction Modifier shall pass to Buyer upon delivery pursuant to Paragraph 1 above.
5. **LIMITED WARRANTY:** Seller warrants Goods to be free of defects in material and workmanship for a period of one year and 90 calendar days for parts from the date of delivery. Seller's liability for defective Goods or part is limited to either repair, replacement, or refund of the purchase price at Seller's election, provided that the defective Goods or part are returned to Seller with Seller's prior approval and transportation charges prepaid by Buyer. Seller must be notified of the defective Goods or part within 30 days of the date when failure occurs or defect is noted. Consumables, such as friction modifier fluid, carpet, and the foam on the bar, are not under warranty.

This warranty shall not apply to any Goods or part which have been subjected to misuse, neglect or accident, or have been altered without authorization or used with unauthorized parts or fluids. Failures caused by improper lubrication or deterioration by chemical action or wear caused by the presence of abrasive materials, do not constitute defects. Under no circumstances, whether or not foreseeable, shall Seller be obligated for consequential, special, incidental or other damages, losses or expenses in connection with the performance of this agreement; Seller's liability is limited to the purchase price of Goods or part. The remedies expressed in this paragraph are exclusive.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED (EXCEPT IN TITLE), INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER OBLIGATIONS OF LORAM.

6. **PAYMENT:** Unless otherwise agreed, invoices shall be paid within 30 days upon receipt. A 2% penalty per month will be assessed against Buyer for late payment.
7. **INTERPRETATION:** These terms and conditions shall be the complete and exclusive statement of the agreement between the parties which shall not be supplemental or amended except as set forth on the face of the invoice or by separate agreement signed by both parties. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any of these terms and conditions. Acquiescence in a course of performances rendered under these terms and conditions shall not be relevant to determine the meaning of this contract even though the acquiescing party has knowledge of the nature of the performance and opportunity for objection.
8. **SELLER'S RIGHT TO TERMINATE FOR DEFAULT:** The Seller, at its option, may terminate this order by default if any of the following acts of default occur: (1) the Buyer's payments are in default; (2) the Buyer breaches any material provision of these terms and conditions; (3) the Buyer becomes insolvent or a petition under any bankruptcy act or similar statute is filed by or against the Buyer and is not vacated within thirty (30) days after such filing. Such termination or default shall be effective upon receipt by the Buyer of a written notice of termination for default issued by the Seller.
9. **ACCEPTANCE:** These terms and conditions shall be the legally binding contract between the parties. Acceptance of these terms and conditions must be made on its exact terms and if additional or different terms are proposed by Buyer, these terms shall not be binding on Seller, unless specifically agreed to in writing by Seller.
10. **SEVERABILITY:** In the event that any one or more provisions are declared invalid, illegal or unenforceable in any respect, the remaining provisions shall not be affected or impaired in any way.
11. **MODIFICATIONS:** These terms and conditions can be modified or rescinded only by a writing signed by both parties or their duly authorized agents.
12. **WAIVERS:** Waiver by either party of a term and condition herein contained shall not be deemed to be a waiver of the terms and conditions of a subsequent breach of the same or other terms and conditions herein contained.
13. **ASSIGNMENT:** No right or interest hereunder shall be assigned by either party without the written consent of the other party. Any attempted assignment or delegation not made in conformity with this paragraph shall be void and ineffective for all purposes.
14. **APPLICABLE LAW:** This agreement shall be governed by the laws of the State of Minnesota, United States of America. The United Nations Convention on the Sale of Goods is inapplicable.