

**KATAHDIN RAILCAR SERVICES, LLC  
PURCHASING TERMS AND CONDITIONS**

**Parties:** These Purchasing Terms and Conditions (these “**Terms**”) are issued by Katahdin Railcar Services, LLC (“**KRS**”) to the seller identified on the Order to which these Terms are attached or in which they are referenced (“**Seller**”) and form a part of the Agreement.

**Definitions and Interpretation.** (a) As used in these Terms and the Agreement, the following words and expressions shall have the following meanings: (i) “**Agreement**” means, collectively, these Terms, all Orders, and any other writing signed by the Parties that references these Terms, all of which are hereby incorporated by reference; (ii) “**Buyer**” means KRS; provided that any KRS affiliate may issue an Order hereunder, in which event, with respect to that Order: (aa) KRS will be deemed to have entered into the Agreement as that affiliate’s agent; (bb) such affiliate shall be “**Buyer**” hereunder; (cc) KRS shall have no liability hereunder whatsoever; and (dd) Seller shall look solely to such affiliate as Buyer hereunder; (iii) “**Commercial Terms**” means the quantities, delivery schedules, prices, and payment terms regarding Goods or Services; (iv) “**Goods**” has the meaning set forth in the Uniform Commercial Code as adopted in Pennsylvania; (v) “**Law**” means any law, rule, or regulation enacted, promulgated, or adopted by any local, state, or federal government or governmental or quasi-governmental body; (vi) “**Order**” means a purchase order or other communication issued by Buyer to Seller regarding Buyer’s purchase of any Goods or Services from Seller, and shall include the Specifications and Commercial Terms therein, any of which may be described on a scope of work or similar document provided by Seller; (vii) “**Party**” means Buyer or Seller, and “**Parties**” means Buyer and Seller; (ix) “**Person**” means an individual, corporation, limited liability company, partnership, association, joint venture, trust, or other entity or organization, whether incorporated or unincorporated, including any local, state, or federal government or governmental or quasi-governmental body; (x) “**Services**” means the performance or management of any work or labor of any type or nature whatsoever, whether performed on Buyer’s property or elsewhere; (xi) “**Specifications**” means any descriptions, depictions, samples, or technical specifications of or regarding Goods or Services. (b) The words “hereof”, “herein” and “hereunder” and words of like import used in the Agreement shall refer to the Agreement as a whole and not to any particular provision hereof. The headings and captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Sections are to Sections hereof unless otherwise specified. All Orders or other documents annexed hereto or referred to herein are hereby incorporated in and made a part hereof as if set forth in full herein. Any capitalized terms used in any Order or other document but not otherwise defined therein shall have the meaning as defined herein. The Parties have participated jointly in the negotiation and drafting hereof and, in the event an ambiguity or question of intent or interpretation arises, the Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision hereof. Any singular term herein shall be deemed to include the plural, and any plural term the singular. References to one gender shall include all genders. Whenever the words “include”, “includes” or “including” are used herein, they shall be deemed to be followed by the words “, but not limited to,”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any Person (including each Party) include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “\$” are to United States dollars. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant hereto, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-business day, the period in question shall end on the next succeeding business day. The word “or” is not exclusive, unless the context otherwise requires. Unless otherwise specified herein, undefined terms shall be given the meaning customarily applied to such terms in the United States.

**Scope; Exclusive Application; Offer and Acceptance.** (a) These Terms and the Agreement applies to all Orders Buyer places with Seller. (b) No terms or conditions other than those stated herein are binding upon Buyer unless in a writing signed by Buyer. Seller’s written or verbal acceptance of an Order and/or the provision of Goods or Services to Buyer shall constitute Seller’s assent to exclusive application of the Agreement. Buyer objects to and rejects all additional or different terms proposed by Seller (including attempts to disclaim warranties or limit liability), irrespective of where contained, and no such different or additional terms shall form part hereof or be binding on Buyer. Buyer’s acceptance of or payment for Goods or Services shall not constitute Buyer’s acceptance of any terms proposed by Seller unless accepted in a writing signed by Buyer. References herein to a quotation or proposal of Seller are solely to incorporate the Commercial Terms (to the extent specifically identified herein) or Specifications thereof. (c) If an Order is deemed to be an acceptance of an offer by Seller, such acceptance is limited to the terms of the Agreement. Additional or different terms or an attempt by Seller to vary any terms of the Agreement are deemed material and are hereby rejected. However, an Order shall not operate as a rejection of Seller’s offer unless it contains different Commercial Terms.

**Purchase and Sale.** Upon and subject to the terms hereof, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Goods or Services outlined in any Order. If an Order is based upon Buyer’s requirements, “requirements” or words of similar intent herein means Buyer’s requirements with respect to the consuming location designated herein, after adjustments for Buyer’s existing inventories, for the goods subject hereto, which requirements Buyer determines subjectively from time to time in its sole discretion to be in its best interests, economic or otherwise, without regard to estimates by Buyer, historical levels of usage, or any course of performance or dealing. Any specific quantity or quantity range set forth herein which refers to Buyer’s requirements: is merely a good faith estimate of Buyer’s expected requirements for the specified time period, based upon Buyer’s then-existing business conditions, the level of operations at the consuming location, and other changing factors and circumstances, many of which are beyond Buyer’s ability to foresee or control; and shall not create a “take or pay” contract.

**Pricing.** All prices are quoted net, on a delivered basis, and are firm for sixty (60) days following the date of the quote, unless a longer period is specified in the quote. Upon the expiration of the time period set forth above, no price increase shall take effect until (a) Buyer and Seller agree on the price change and (b) Buyer has updated the pricing in its purchasing software, which Buyer shall do within thirty (30) days of the Parties agreement to the price change.

**Delivery.** Seller shall properly pack, load, and deliver goods in accordance herewith. If an Order does not include: **(a)** quantity or delivery schedule, quantities and schedules shall be as Buyer later directs; or **(b)** delivery terms, delivery shall be at Seller's cost, Seller shall retain risk of loss until delivery, and ownership shall pass to Buyer upon delivery. Buyer shall not be required to pay any amounts: **(y)** that exceed the Commercial Terms; **(z)** until Buyer receives (and any discounts are extended until thirty days after Buyer receives): **(i)** correct and complete invoices, including delivery charges, in such form and detail as Buyer requires; **(ii)** proof that the delivery is free of all liens, encumbrances, and claims. Time is of the essence for all deliveries.

**Inspection:** Notwithstanding payment, passage of title or prior inspection, all items are subject to final acceptance or rejection by Buyer. Buyer shall have the right to enter Seller's facility at reasonable times to inspect the facility, goods, materials and any property of Buyer covered hereby. Such inspection of the goods, whether during manufacture prior to delivery or within a reasonable time after delivery shall not constitute acceptance of any work-in-progress or finished goods, whether or not a breach of warranty or other defect had become evident at the time.

**Warranty:** Seller warrants that all Goods or Services covered hereby: will strictly conform to the Order; and are merchantable, of good material and workmanship, and free from defect. Seller knows of Buyer's intended use and expressly warrants that all goods covered hereby selected by Seller or designed, manufactured, or assembled for Seller will be fit for Buyer's particular purpose.

**Indemnity:** **(a)** Seller agrees to and does indemnify, defend, and hold harmless Buyer and its affiliates and each of their equity owners, and each of their officers, directors, employees, agents, and representatives, and each of their heirs, personal representatives, successors, and assigns (each, an "**Indemnified Party**") from and against any and all losses, damages, liabilities, deficiencies, costs, and expenses of any nature whatsoever (including attorney's fees and defense, investigation, discovery, court, and other costs) suffered by any Indemnified Party (each, a "**Loss**"), including those resulting from any claims, demands, actions, causes of action, or other legal or administrative proceedings at law or in equity against any Indemnified Party (each, a "**Claim**"), arising from or relating to any of the following **(i)** personal injury (including illness, disease, or death, including workers' compensation Claims), property damage, or loss of use, maintenance, cure, profit, or wages arising from or relating to the Seller's provision of any Services (including, if applicable, the construction, fabrication, and delivery of any Goods), including if conducted on Buyer's property, in all cases irrespective of whether any Loss or Claim is caused or alleged to be caused by the sole, contributory, or concurrent negligence of an Indemnified Party; **(ii)** any claims asserted against any Indemnified Party by Seller's employees or subcontractors, materialmen, and suppliers (including mechanic's lien claims); and **(iii)** Seller's breach of any representation, warranty, or covenant herein (all of the foregoing, the "**Indemnified Matters**"). **(b)** In defending any Claim, the Indemnified Party shall have the right to approve or disapprove of **(i)** Seller's counsel for any such matter, and in the event Seller's counsel chosen is unacceptable to the Indemnified Party, the Indemnified Party may engage its own counsel at Seller's sole cost and expense to represent the Indemnified Party in such matter, **(ii)** defenses, counterclaims, or cross claims by or on behalf of the Indemnified Party, and **(iii)** whether or not to settle any such matter. **(c)** The terms of this Section shall survive the expiration or termination hereof.

**Insurance:** Throughout the term hereof, Seller shall, at its cost and expense, maintain (and provide Buyer proof of) insurance coverage as outlined in "**Attachment I**" hereto, which is incorporated herein. The obligations in this Section shall survive the expiration or termination hereof as to all matters occurring during the term hereof. The term "Contractor" as used in Attachment I shall mean Seller.

**Patents, Etc.:** Seller is solely responsible for the selection of the methods or processes by which it provides the Goods or Services covered hereby. Seller will indemnify, defend, and hold harmless Buyer against any claims, legal actions, demands, damages, expenses, liabilities, costs and attorney's fees incident to any infringement or claimed infringement of any patent, trademark, copyright or other intellectual property right in the manufacture, sale and/or use of the articles or materials covered hereby or connected with the use thereof by Buyer; provided, however, that Buyer may, at its election, be represented in any such legal actions or settlement of such claims by attorneys of its own selection at its own expense.

**Work Product:** All Specifications, drawings, field notes, software, and any other documents, materials or work product, whether in written, audio, video or electronic form ("**Work Product**") developed for Buyer or unique to the subject matter hereof ("**Buyer Work Product**") is the property of Buyer. Seller shall assign or arrange for the assignment of all rights, title and interest, including copyrights, for all such Buyer Work Product to Buyer. Buyer shall have the right to use any Work Product not developed for Buyer or not unique to the subject matter hereof ("**Seller Work Product**"), for any purpose pertaining to Buyer's installation, operation, maintenance and repair of the Goods or performance of any Services purchased hereunder including the right to contract with others to manufacture replacement parts or install additional or complementary equipment, software, or components. Buyer's failure to take possession of any such Buyer Work Product shall not be construed as a waiver of Buyer's rights therein.

**Confidentiality:** Unless a separate nondisclosure or confidentiality agreement is executed by Seller, any information (including Buyer's Work Product) obtained by Seller in connection herewith, whether or not marked or identified "confidential", is "Confidential Information", and will be treated as proprietary information by Seller indefinitely. Confidential Information shall not be copied or disclosed to any third party unless authorized by prior written consent of Buyer. Confidential Information shall only be disclosed within Seller's internal organization to those employees whose duties justify their need to know such information and then only on the basis of clear understanding by such employees of their obligation to maintain the confidentiality of all Confidential Information. Seller represents and warrants that it has in place all the necessary procedures and safeguards to protect and keep secure and confidential all Confidential Information. Seller acknowledges that Confidential Information in written or other tangible form is the property of Buyer and, upon written request, shall be promptly destroyed or returned to Buyer, together with all reproduction thereof, in any form, which Seller may have in its possession or control.

**Lien Waivers; Ownership:** Seller shall keep Buyer's property (including any delivered Goods) free of all mechanic's, materialmen's, or other liens arising in connection with Goods or Services covered hereby and shall execute or cause to be executed and submit with each invoice such lien waivers, sworn statements and related forms as Buyer shall request. Seller shall execute such documents as Buyer may reasonably require as evidence of Buyer's interest in any property owned by Buyer in Seller's possession.

**Environmental; Health; Safety:** Buyer shall comply with all laws, rules, and regulations in providing any Goods (including deliveries thereof, including hazardous materials) or Services purchased hereunder. If applicable, Seller shall electronically submit to Buyer a Safety Data Sheet (“SDS”) for all goods. Buyer reserves the right to refuse any delivery that does not meet these requirements and cancel future purchases of goods. Seller and its subcontractors shall comply with Buyer’s safety and security requirements.

**Compliance with Laws:** Seller shall comply with all applicable Laws in connection herewith. Any clause required to be included in a contract of this type by any applicable Law is incorporated herein.

**Data Security:** If Seller has access to Buyer’s data or technology systems or equipment, Seller shall comply with Buyer’s data protection requirements.

**Tax:** Buyer shall pay all sales and use taxes imposed on the purchase price of Goods or Services purchased hereunder. Seller’s invoices shall include sufficient detail so Buyer may determine the sales and use tax. If applicable, Buyer will provide Seller with a copy of Buyer’s sales tax exemption certificate in lieu of paying any such tax. Seller will exercise a good faith effort to reduce the overall transaction taxes relating to purchases of Goods or Services (including use of resale certificates and claiming available exceptions) and extend to Buyer the benefit of any tax savings. Seller shall pay all other taxes, assessments, levies, or related charges relating to the sale of the Goods and Services purchased hereunder.

**Changes; Cancellation:** Buyer may modify any Specifications and Commercial Terms (except price and, if an Order specifically states that the price therein is contingent upon a minimum order quantity, except quantity) by issuing a change order to Seller. Seller’s written or verbal acceptance of a change order and/or provision of Goods or Services to Buyer shall constitute Seller’s assent to the changes. Buyer may cancel any or all of the Agreement for its own convenience, in which case Seller is entitled to, but only to (as Buyer’s sole liability), an equitable amount not to exceed its verified direct costs reasonably expended or committed to third parties prior to the notice of termination (which costs Seller shall use its best efforts to minimize), less salvage value and any other amounts recoverable by Seller.

**Default:** The following shall be a breach by Seller: **(a)** Seller becomes insolvent; **(b)** Seller files a voluntary bankruptcy petition; **(c)** Seller has an involuntary bankruptcy petition filed against it; **(d)** a receiver or trustee is appointed for Seller; **(e)** Seller executes an assignment for the benefit of its creditors; or **(f)** Seller **(i)** repudiates any term hereof; **(ii)** fails to deliver the Goods or perform Services as required; or **(iii)** fails to make timely progress towards delivery of the Goods or completion of Services and, for (f)(i)-(iii) only, Seller does not correct such failure within 3 days after Buyer’s notice specifying the breach.

**Remedies:** Upon Seller’s breach hereof, Buyer shall have all remedies under applicable law (which are hereby reserved), including to (all at Seller’s risk and cost): **(a)** return nonconforming goods; **(b)** require Seller to promptly replace or correct such items; **(c)** obtain a refund; **(d)** effect cover for replacement items; **(e)** repair such items; **(f)** accept or retain non-conforming items and equitably reduce their price; and/or **(g)** withhold amounts due Seller hereunder sums sufficient to compensate itself for any amount owed from Seller to Buyer.

**Entire Agreement; Binding Effect.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter thereof, and supersedes all prior oral or written representations, warranties, or covenants not set forth herein. The Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.

**Amendment; Waiver.** This Lease may be amended, renewed, extended, or canceled only by a written instrument executed by an authorized representative of each Party, and neither Party shall assert or contend that any amendment, extension or cancellation hereof (or any part hereof) has been made other than by a written instrument so executed. The failure of either Party at any time to require performance by the other Party of any provision of hereof, shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either Party of a breach of any provision hereof, constitute a waiver of any succeeding breach of the same or any other provision.

**Independent Parties.** Seller and Buyer are independent contracting parties and nothing herein shall make either Party the agent, partner, joint venturer or legal representative of the other for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other.

**Non-Assignment:** Seller may not assign or delegate its rights or duties in any or all of the Agreement without Buyer’s written consent.

**Governing Law:** The Agreement is governed by the laws of the Commonwealth of Pennsylvania, excluding its conflicts of law provisions. Seller irrevocably: agrees that any action or proceeding regarding the Agreement shall be brought in the state or federal courts sitting in and for Allegheny County, Pennsylvania; and submits itself to the personal jurisdiction of such courts and waives any objection to such venue or jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply hereto.

**Notices.** All notices, requests and other communications to any Party shall be in writing (including e-mail transmission, so long as a delivery receipt of such e-mail is requested and received, which may be by automated receipt) and shall be transmitted to the Party’s address on the Order or to such other address as such Party may hereafter specify. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received before 5:00 pm in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt.

**Severability.** If any provision hereof is found to be invalid or otherwise unenforceable in any court of competent jurisdiction, the allegedly invalid or unenforceable provision shall be deemed valid and enforceable to the maximum extent permitted by law and shall be deemed to be amended to the minimum extent necessary to make it valid and enforceable in such jurisdiction, and the alleged invalidity and/or unenforceability in such jurisdiction shall not affect the validity or enforceability of any other provision hereof in such jurisdiction or the validity or enforceability of the allegedly invalid and/or unenforceable provision, or of any other provision hereof, in any other jurisdiction.