

NEW YORK AIR BRAKE (“NYAB”) / KNORR BRAKE CORPORATION (“KBC”) (each one, the “Buyer”) PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE OF PURCHASE ORDER** - a.) Seller's acceptance of this Order must be limited to the terms hereof, expressed or implied. Any terms or conditions in such acceptance are deemed to be proposals which do not become a part of this transaction unless Buyer consents thereto in writing.
b.) Seller's shipment of conforming or nonconforming goods specified in this order may, at the sole election of Buyer, be treated as Seller's acceptance and assent to all terms and conditions hereof.
2. **DELIVERY SCHEDULE AND QUANTITIES** - TIME IS OF THE ESSENCE OF THIS AGREEMENT. If delivery of goods or rendering of services is not completed by the time required by this Order, the Buyer reserves the right, without liability, in addition to its other rights and remedies, to terminate this Agreement by notice effective when received by Seller, as to stated goods not yet shipped or services not yet rendered, and to purchase substitute goods or services elsewhere and charge the Seller with any loss incurred. Any provisions herein for delivery of goods or the rendering of services by installments shall not be construed as making the obligations of Seller severable. Goods received prior to Buyer's specified delivery date will not be deemed accepted by Buyer unless expressly agreed in writing and risk of loss shall not pass to Buyer prior to the specified delivery date.
3. **PRICES** - Unless there is a special notation to the contrary on the face hereof, all prices are F.O.B. shipping point. Instructions covering standard shipping guidelines, including any applicable charges are contained on the face of this Order as well as sales tax information. No insurance or premium transportation charges or price increases will be allowed unless authorized by Buyer in writing. No increase in price from that stated on the face hereof will be considered. If no price is shown, the price will be that last paid by Buyer to Seller for similar goods or services.
4. **OVERSHIPMENTS** - Buyer's obligation to pay for items delivered by Seller is limited to the lower of items actually delivered or the quantity of items set forth in this Purchase Order. Buyer has no obligation to pay for, set aside, or return items delivered in excess of the quantity ordered herein. All such excess items, at Buyer's option, may be: (a) deemed sold by Seller to Buyer as part of this Order at no additional cost to Buyer beyond the cost of the items specified herein, or (b) returned to the Seller at Seller's expense.
5. **INVOICES AND PAYMENT** - Invoices shall be submitted in duplicate immediately upon each shipment of goods or completed item of services (unless otherwise agreed to by the Buyer and Seller) to the Buyer's Accounts Payable Department. All invoices must show the Buyer's Purchase Order number and item numbers supported by this invoice. Taxes must be separately itemized. Purchase order number and item number must appear on all shipping documents, invoices, quality certifications and packing sheets. Payment shall be made per the terms established on the face hereof. Payment is subject to any adjustment for any shortage or rejection of supplied goods or services. Freight and other charges shall be itemized and presented with appropriate justification.
6. **PACKING AND SHIPPING METHODS** - All items must be suitably packaged and prepared for shipment to secure lowest transportation rates and compliance with standard carrier regulations. The Seller shall take reasonable means to insure that ordered goods furnished will be treated by suitable means against rusting or oxidizing or other degradation of the goods. The Seller shall use identified carrier on the face hereof, unless altered by the Buyer in writing. No charges will be paid by Buyer for packing, crating or cartage unless previously agreed to in writing.
7. **CERTIFICATION OF COMPLIANCE** - A Certificate of Compliance is required for Knorr (NYAB or KBL) designed product with each shipment on this Order. Such certificate to include a statement such as: Material on this order meets all applicable specifications, drawings, and requirements. The Certificates shall be a separate document from all other documents or shipping papers. Or if Purchase Order is issued by Knorr Brake Corporation send certification to Knorr Brake Corporation, 861 Baltimore Blvd., Westminster, Maryland 21159-9000. A valid NAFTA Certificate is required for all goods eligible to the benefits of NAFTA. Seller accepts all responsibility for the information provided on customs or NAFTA certificates of origin, letter, or affidavits. By signing these documents the seller is accepting the responsibility that the information provided by the seller is complete and accurate. Seller also accepts all additional costs incurred by NYAB (dutes, penalties, fines), as a result of invalid NAFTA certificates, will be the responsibility of the vendor. Seller also accepts any liabilities resulting from inaccurate data or failure to comply with NAFTA or customs requirements.
8. **BUYER'S PROPERTY** - Unless otherwise agreed in writing by Buyer, all goods, equipment, data, drawings, toolings, materials, specifications, and any other items or information supplied to Seller shall remain the property of the Buyer. All such items may be required to be returned upon completion of this order within a reasonable time. Such property, and whenever practical each individual item thereof shall be plainly marked, tagged, or otherwise adequately identified by the Seller as "Property of New York Air Brake Corporation" or "Knorr Brake Corporation" as applicable.
9. **CHANGES** - a) BY BUYER. Buyer may at any time, by written notice, make changes in drawings and specifications, shipping instructions, quantities, and delivery schedules. Should any such change increase or decrease the cost of, or the time required for, performance of the Order, an equitable adjustment in the price and/or delivery schedule will be made. Any claim for adjustment by Seller must be made within thirty days from the date the notice of change is given or within such additional period of time as may be agreed upon in writing. NYAB/KBC may in its sole discretion consider any such claim regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information. NYAB/KBC shall then have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's Claim.
b) BY SELLER. The Seller agrees that no other changes shall be binding until or unless approved by NYAB/KBC. Those revisions shall be transmitted for approval to the NYAB/KBC Purchasing Department(s) as applicable.
10. **NOTICE BY BUYER TO SUSPEND WORK** - The Seller shall delay or suspend performance hereunder, or any part thereof, whenever he shall be so required by written Order of the Buyer, and for such reasonable periods of time as the Buyer may order, provided that in the event of such delay or of such suspension, the time for completion of performance so suspended or delayed by such order of the Buyer, shall be adjusted equitably and such delay or suspension shall not otherwise modify or invalidate in any way any provisions of the Order, and the Seller shall not be entitled to any damages or compensation except compensation for wages and salaries of employees and other extra expenses of the Seller that in the opinion of the Buyer are necessary only for use to fulfill this Order or that are necessary to complete any line operations which, by their nature, may not be interrupted. The Seller shall submit a detailed statement of such extra cost to the Buyer for audit, and upon approval by Buyer, payment.
11. **TERMINATION** - Buyer may by written notice to Seller: a.) Terminate the whole or any part of this contract in any one of the following circumstances: (1) if Seller fails to perform within the time specified herein or any authorized extension thereof; or (2) if Seller fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms and if any such failure is not cured within a period of 10 days (or longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure; b.) Upon such termination Buyer may procure, upon such terms as it shall deem appropriate, goods or services similar to those terminated, in which case Seller shall continue performance of this Order to the extent not terminated and shall be liable to Buyer for any excess costs for such goods or services, and
c.) At any time terminate this Order in whole or in part for convenience, in which case Seller shall thereupon as directed by Buyer cease work and deliver to the Buyer all completed and partially completed goods or materials and work in process, and Buyer, upon auditing the Seller's claim under this Order, shall pay to Seller the following, which in no event shall exceed the total price provided for herein: (1) the price provided in this Order for all goods or services which have been completed prior to termination and which are accepted by Buyer, and (2) the actual expenditure on the uncompleted portion of the Order including reasonable cancellation charges paid by the Seller on account of commitments made under this Order prior to termination.
12. **TITLE AND RISK OF LOSS** - Unless otherwise provided in this order, Seller shall have title and bear the risk of any loss or damage to the items purchased hereunder until they are received by Buyer at the delivery destination specified in this Order, or if no destination is specified, at Buyer's principal place of business. Upon such receipt, title shall pass from Seller and Seller's responsibility for loss or damage shall cease except for loss or damage resulting from Seller's negligence. Passing of this title upon such receipt shall not constitute acceptance of the item by the Buyer.
13. **DISPUTES.** a.) Any dispute arising under this Order which is not resolved by agreement shall be decided by Buyer. Such decision shall be reduced to writing, and a copy thereof mailed or otherwise furnished to Seller. Within thirty days after date of receipt of each copy, Seller may notify Buyer in writing of its disagreement with the decision. In the absence of such notice, such decision shall be final. In the event Seller notifies Buyer of its disagreement and on condition that Seller complies with paragraph b) below, Seller may appeal that decision by pursuing within one year after that decision, any right or remedy it may have against Buyer at law or in equity in any court of competent jurisdiction.
b.) Pending the final resolution of the dispute by court decision or agreement between the parties, Seller shall diligently proceed with the performance of this order in accordance with the decision of Buyer pursuant to paragraph a) above, except to the extent that the decision is that Seller is not to proceed with the performance of all or a particular part of this Order.
14. **WARRANTIES AND REPRESENTATIONS** - SELLER WARRANTS AND REPRESENTS: a.) That all goods and services covered by this Order will, at the time of delivery to Buyer and, unless a longer warranty is otherwise provided for in this Order, for one year after Buyer's acceptance thereof, be of the quantity, size, description, dimension and best quality stored or referred to in this Order, will conform to the specifications, drawings, samples, or other descriptions furnished or specified by Buyer, will perform as specified herein and will be merchantable, of good quality and workmanship, free from defects in material, design, specifications and workmanship, and fit for the purpose intended;
b.) Except as to any goods which the specifications contained herein specifically provide need not be new, that the goods so delivered are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety);
- c.) That such warranties shall apply to buyer and to customers and users of Buyer's products or services;
d.) That the prices charged herein are in accordance with any applicable laws and regulations and are as low as any net price now given by the Seller to any other customer for like goods or services, and agrees that if at any time during the pendency of this order, lower prices are quoted by anyone for similar goods or services, such lower net price shall be from that time substituted for the prices contained herein;
e.) That these warranties shall survive inspection, test, and acceptance of any payment for the items and shall be in addition to any warranties of additional scope given to Buyer by Seller, or provided at law or equity; and
f.) In the event of breach of warranty, Buyer may, at its option and in addition to other remedies available to it, either return and receive immediate reimbursement for, or require prompt correction or replacement of, the defective or nonconforming goods or services.
15. **INDEMNIFICATION** - Seller agrees to indemnify, defend and hold Buyer, Buyer's customers and anyone claiming through Buyer or Buyer's customers harmless against any and all liabilities, costs, expenses (including attorneys fees), and losses whatsoever incurred by Buyer, Buyer's customers and anyone claiming through Buyer as a result of any allegation grounded in breach of warranty, negligence, strict liability in tort or otherwise.
16. **PATENT INDEMNITY** - The seller agrees to defend, hold and save harmless the Buyer and any of Buyer's customers and all persons claiming under Buyer from any and all loss, damage, and expense (including attorneys fees) of any kind by reason of actual or alleged infringement or contributory infringement of any letters patent or trademark rights by reason of the manufacture, delivery, use or sale of the goods delivered or work performed hereunder (except infringement necessarily resulting from adherence to specifications or drawings, other than those of Seller's design or selection, originally submitted to Seller by Buyer) and the Seller agrees to defend at its own expense any and all actions or proceedings charging infringement of letters patent or trademark rights that may be brought against the Buyer or any of Buyer's customers, or all persons claiming under Buyer, and to pay all costs and damages that may be asserted or incurred in every such action.
17. **INFORMATION DISCLOSED TO BUYER AND SELLER** - a.) All knowledge or information which Seller may have disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this Order shall not be deemed confidential or proprietary. No employee of Buyer has authority to make any agreement, express or implied, limiting use of, publication of, or providing for confidential treatment of, information, equipment or suggestions unless agreed to in writing by an officer of the Buyer.
b.) All drawings, specifications or samples provided by Buyer to Seller for tendering or production purposes shall be kept strictly confidential and shall be preserved in good order by Buyer, to be returned promptly upon completion of Order.
18. **LIMITATION OF LIABILITY** - Buyer shall not by any reason of termination, cancellation or breach of this Order be liable to Seller for any compensation, reimbursement, or damages, including in particular but not limited to any special, incidental, or consequential damages, either on account of present or prospective profit on sales or anticipated sales, or on account of expenditures, investments or commitments.
19. **SECURITY AGREEMENT** - Seller hereby grants to Buyer a security interest in all in process, parts and materials identifiable with the goods subject to this Order, to the extent of any payment made by Buyer. Seller authorizes Buyer to execute in Seller's name any UCC financing statement or other documents and do such other acts considered by Buyer to be necessary to perfect or protect the security interests hereby created.
20. **NON-WAIVER** - Buyer's failure at any time to require strict performance by Seller of any of the provisions herein shall not waive or diminish Buyer's right thereafter to demand strict compliance therewith or with any other provisions. Waiver of any default shall not waive any other default.
21. **WORK ON BUYER'S PREMISES** - In the event this Order is for work to be performed, or goods to be delivered by Seller, on Buyer's premises or the premises of a customer of the Buyer, the Seller hereby assumes entire responsibility and liability for damages or injuries from or occurring in connection with the execution of the work provided for in this Order, and if any person shall make a claim for damage or injury, whether such claim be based upon the Buyer's alleged active or passive negligence or participation in the wrong or upon any alleged breach of statutory duty or obligation on the part of the Buyer, and to assume on behalf of the Buyer the defense of any action at law or inequity, and to pay on behalf of the Buyer, the amount of any judgment that may be entered against the Buyer in any such action.
22. **ASSIGNMENT, SUBCONTRACTORS** - Assignment of this Order of any interest herein or any payment due to or to become due hereunder, without prior written agreement by the Buyer, shall be void. Seller shall not subcontract all or any substantial part of the work called for in this Order without the prior written consent of Buyer.
23. **COMPLIANCE WITH LAWS** - In performing under this Order, Seller shall comply with all applicable federal, state and local laws, rules and regulations. Without limiting the generality of the foregoing, Seller in accepting this Order represents that goods to be furnished or services to be rendered hereunder will be produced or performed in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and all valid and applicable regulations and orders of the Administrator of the Wages and Hour Division Regulatory Reform Act of 1976 as implemented in regulations entitled "Non-Discrimination of Federally Assisted Railroad Programs" (42 Red. Reg. 4286) with particular significance to sections 265-11 and 265.13; the Walsh-Healy Public Contracts Act, as amended; the Equal Employment Opportunity Clause in Section 202 of Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended; and The Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended and the Occupational Safety and Health Act of 1970. Seller agrees, with respect to the goods or services to be supplied, to comply with the provisions of said Acts and certifies that all items furnished under this Order will conform to and comply with said Acts, standards and regulations, or other laws or regulations. Seller further agrees to indemnify and hold harmless Buyer for all damages, losses, costs, or expenses (including legal fees) suffered by Buyer as a result of Seller's failure to comply with such Acts and for the failure of the items furnished under this Order to so comply. By performance under this Order the Seller certifies that goods or services were produced or performed in accordance with the foregoing agreement.
24. **AUDIT AND INSPECTION OF RECORDS** - The Seller shall maintain accurate records, documents and other evidence in accordance with sound accounting procedures and practices, of all expenditures made and all costs, liabilities, and obligations incurred during the performance of this Order. The Seller shall preserve and make available their records for a period of three (3) years from the date of final payment under this Order. The seller shall permit any authorized government agency including the United States Department of Transportation, the US Comptroller General, the State's Department of Transportation, the State's Comptroller, the appropriate Transit Authority, and their authorized representatives, to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant equipment, data and records and to audit the books, records and accounts of Seller pertaining to this Order.
25. **QUALITY ASSURANCE REQUIREMENTS** - a.) INSPECTION - All items delivered hereunder are subject to final inspection and acceptance at Buyer's destination, notwithstanding any prior payment or inspection at source. Such inspection will be made within a reasonable time after delivery. Acceptance of any items shall not be deemed to alter the obligations of Seller or the rights of Buyer under the Warranties clause.
b.) QUALITY AUDIT - During performance on this Order, Seller's Quality Control, Inspection system and manufacturing processes are subject for review, verification, analysis or audit by Buyer's personnel and/or Buyer's authorized representatives to assure conformance to specifications for this Order.
c.) CALIBRATION OF INSPECTION EQUIPMENT - All measurement devices used for final acceptance, shall be calibrated with traceability to the National Institute of Standards and Technology with reports retained for review by NYAB/KBC upon request.
d.) REJECTION - Rejected items will be held at Seller's risk and expense, effective upon receipt by Seller of notice of rejection. No replacement of defective items shall be made by Seller unless agreed to by Buyer in writing. The Seller must pay transportation both ways on rejected or incorrect material as well as all expenses of unpacking, examining, repacking and reshipping of goods. When replacement is not to be made, appropriate credit should be immediately forwarded to Buyer. Buyer may by contract or otherwise replace or correct such goods or services and charge Seller for costs and damages. At Buyer's option, Buyer may inspect goods covered by this Order at Seller's plant with Seller providing necessary facilities to conduct such inspection. Payment for any goods or services hereunder shall not be deemed an acceptance thereof.
26. **PURCHASE ORDERS AND PURCHASE ORDER AMENDMENTS** - It is agreed that all purchase orders and amendments (even unsigned) originating from Buyer will be accepted as meeting our contractual obligations and that no subsequent mailed or signed copy will be forthcoming.
27. **GOVERNMENT FUNDS** - Seller is hereby placed on notice that Government Funds may be used to procure various items or services under this contract. As a result, the Seller's accounting books and manufacturing records concerning work performed may be therefore subject to audit by appropriate Government Agency.
28. **GOVERNING LAW** - This order shall be interpreted in accordance with the laws of the state of (if the Purchase Order is issued by New York Air Brake Watertown, the governing state is New York, if the Purchase Order is issued by Knorr Brake Corporation in Westminster, Maryland, the governing state is Maryland).