

Unitrac Order Acknowledgement

ORDER ACKNOWLEDGMENT - TERMS AND CONDITIONS -- The Terms and Conditions set out on the following pages may not be altered orally or in writing. Any terms or conditions included in a document sent by you in response which vary from, differ from or conflict with the Terms and Conditions set out below are expressly rejected.

1. Material/equipment is furnished in accordance with the specification sections listed on the first page of this Order Acknowledgment and in accordance with approved drawings, subject to the listed addenda, for the price quoted on the first page of this Order Acknowledgment.
2. All prior representations, discussions and negotiations between you and UNITRAC are merged into this Order Acknowledgment. Acceptance of this Order Acknowledgment by you constitutes acceptance of all its terms and conditions which supersede any differing, varying or conflicting term in any other document. Your acceptance of this Order Acknowledgment is evidenced by your signature on the front of the Order Acknowledgment, tender of your purchase order to UNITRAC or by you allowing UNITRAC to begin performance of the work described in this Order Acknowledgment. No term of this Order Acknowledgment shall be varied in any way other than by mutual written agreement. All terms in any purchase order issued in response to this Order Acknowledgment which vary from, differ from or conflict with the terms of this Order Acknowledgment are expressly rejected.
3. Single shipments of materials/equipment require payment to be made in net thirty days from invoicing. If material/equipment is to be delivered in installments, you will make monthly progress payments on or before the 15th of each month for the value of work completed plus the amount of material/equipment suitably stored whether on or off site, where UNITRAC has presented a request for payment on or before the 25th day of the preceding month. Final payment is due thirty days after delivery of the material/equipment described in this Order Acknowledgment is completed. . UNITRAC is not responsible for unloading of the material/equipment, demurrage or damage occurring during unloading.
4. All orders are subject to credit approval by UNITRAC.
5. All sums due under this Agreement not paid when due, shall bear interest at a rate of one and one-half (1.5%) percent per month, compounded monthly, or the maximum legal rate permitted by Law, whichever is less. All costs of collection, including reasonable attorney's fees, will be paid by you in the event collection efforts are required.

6. UNITRAC has the right to cease performance under this Agreement five (5) days after sending written notice to you as to your failure to make a required payment.

7. Nothing in this Agreement will serve to waive or void UNITRAC's right to file a lien or claim on its behalf in the event that any payment due to UNITRAC is not properly and timely made.

8. All obligations of UNITRAC under this Agreement are contingent upon UNITRAC's receipt of all required submittals and approvals of submittals by the date or dates listed on the first page of this Order Acknowledgment, if any.

9. All work pursuant to this Order Acknowledgment by UNITRAC is to be performed during UNITRAC's regular working hours. Any work authorized for performance outside of such hours shall be charged for at rates or amounts agreed to at the time such overtime is authorized by you.

10. Except for the particulars set out in this Order Acknowledgment, all material/equipment sold and services provided shall conform to UNITRAC's standards for such material/equipment and services provided. All material/equipment sold, including that produced to meet an exact specification is subject to tolerances and variations consistent with usages of the trade and regular mill practices concerning dimension, weight, straightness, section, composition and mechanical properties. It is agreed that there are normal variations in surfaces, internal conditions and quality and that the material/equipment sold and services provided may vary within that range accepted as conforming within the trade. Explosive depth hardening (EDH), CNC machining and reclaiming operations performed by D.ET.S. are dependant on the quality of the casting or other material provided to it. UNITRAC is not responsible for failures of the casting or other material to withstand EDH, CNC machining and reclaiming operations. You agree and authorize UNITRAC, in its sole discretion, to make any weld repairs and/or do any machining and straightening it deems necessary to a casting you have provided up to a maximum charge of \$150.00 per piece for repair welding and machining and \$140.00 for straightening. Any alteration of material or equipment supplied hereunder by you or your customer may, in UNITRAC sole discretion, result in the voiding of any certifications issued by UNITRAC's; and, UNITRAC is not liable for product serviceability when you have directed work to be performed on a casting or other material, which in UNITRAC opinion should not be performed.

11. All material/equipment sold and services provided is warranted to be free from defects, subject to the provisions of the preceding paragraph, for the lesser of the period of time set forth in the applicable specification or one year from the date of delivery. The warranty given runs from the date of delivery. Your exclusive remedy under this warranty will be that UNITRAC will, at its option, replace or repair any part of the material/equipment sold which is found to be defective. **UNITRAC IS NOT RESPONSIBLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF**

ANY KIND, NOR FOR DAMAGE TO THE MATERIAL/EQUIPMENT DONE BY OTHERS OR RESULTING FROM IMPROPER USE OF THE MATERIAL/EQUIPMENT. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THOSE, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. Any claim by you under this Order Acknowledgment is waived unless notice of the claim is given in writing to UNITRAC including a statement as to the basis for the claim within five (5) business days of the event giving rise to the claim.

13. UNITRAC is not responsible for delays or defaults which are the result of any cause beyond its control, including but not limited to, delays or defaults caused, in whole or in part, by you, a project owner, general contractor, architect, engineer, any subcontractor and/or any materialmen, delays in transportation, shortages of raw materials, civil disorders, labor difficulties, vendor allocations, fires, floods, accidents or other acts of God.

14. UNITRAC is not responsible for any liquidated damages in any sum in excess of any amount specifically set out in this Order Acknowledgment; and in any event no such liquidated damages will be assessed against UNITRAC for more than the amount assessed against you by the owner of a project, and then, liquidated damages will be assessed against UNITRAC only if such damages are caused solely by UNITRAC. Any such claim for liquidated damages constitutes your sole remedy for time-element loss of any kind against UNITRAC.

15. UNITRAC is not liable for injury to persons and damage to property not caused solely by its own negligent acts or omissions and as further limited by the terms of this Order Acknowledgment. You agree to the fullest extent permitted by law to indemnify UNITRAC and to hold it harmless from any such claims against UNITRAC caused in whole or in part by your or a third-party's negligence including UNITRAC's reasonable attorneys fees incurred to defend against such claims and to enforce this provision against you.

16. Upon your acceptance of this Order Acknowledgment, the order for material / equipment cannot be cancelled, the specifications changed, nor any material/equipment returned, without the prior written agreement of UNITRAC: and, you agree to pay the anticipated profit and resulting reasonable costs including, but not limited to, restocking and freight charges to UNITRAC of such cancellation, change or return.

17. Any notice of written claim required by your agreement with another person or entity to be submitted on account of changes, extras, delays, acceleration or otherwise, shall be furnished by UNITRAC within a time period, and in a manner, so as to permit you to satisfy the requirements of such agreement only if such requirements are advised of to UNITRAC in writing before the time of the occurrence or event which gives rise to such claim. With respect to such

claims, if there is any conflict between provisions of this Order Acknowledgment and said other agreement, this Order Acknowledgment's terms shall govern the rights and obligations between you and UNITRAC.

18. This Order Acknowledgment shall be interpreted according to the Uniform Commercial Code as enacted in Tennessee (except as to its provisions concerning conflict of laws). It is agreed that all performance under this Order Acknowledgment, including your payment to UNITRAC, is deemed to occur in Tennessee. It is agreed that all disputes arising out of or connected to this transaction will be heard in a Tennessee court of competent jurisdiction. UNITRAC failure to insist on strict performance of any of the terms and conditions or exercise any rights or remedies herein or provided by law shall not serve to waive UNITRAC right to enforce such terms and conditions, rights and remedies. You may not assign your rights hereunder without the written consent of UNITRAC. You agree to the personal jurisdiction of such court. It is agreed that this Order Acknowledgment is severable and that should any term of the Order Acknowledgment be found to be invalid that the remainder of the Order Acknowledgment shall remain in full force and effect.

In acknowledgement, I agree to the above terms and conditions on this ____ day of _____, 2008.

Client: _____

Signature _____

[Please return signed original of this agreement to Unitrac Railroad Materials]