

### CUSTOMER TERMS AND CONDITIONS OF SALE

**APPLICABILITY.** These Customer Terms and Conditions of Sale (“Terms”) represent the final and complete understanding of the parties and are the only terms and conditions which govern the sale of the goods (“Goods”) by Trackmobile LLC (“Seller”) to buyer (“Buyer”) and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms; provided, however, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail.

1. **ENTIRETY.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party. Acceptance is expressly limited to these Terms. Any proposal for additional or different terms or any attempt by Buyer to vary these Terms is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to these Terms. The earlier of Buyer’s submission of a purchase order or receipt of any of the Goods or Seller’s commencement of performance shall constitute acceptance of these Terms.
2. **PRICES.** Prices quoted are based on the price at the time of quotation and are subject to change without notice. Clerical errors are subject to correction without liability.
3. **TAXES.** Prices do not include any sales, use, excise, privilege, or other taxes or assessments (“Taxes”) now or hereafter imposed or levied by or under the authority of any foreign, federal, state, or local law, rule, or regulation (collectively, “Law”) concerning the Goods or the manufacture or sale thereof. If Seller pays any Taxes, Buyer shall, upon demand, immediately reimburse Seller for such amounts.
4. **TERMS.** All orders are subject to acceptance in writing by Seller. Unless agreed by Seller in writing, all payments are to be prepaid. No discounts shall be taken unless expressly allowed in writing by Seller. All amounts due to Seller from Buyer shall be paid without abatement, deduction, or setoff. Invoices not paid when due are subject to a late payment service charge of the lesser of 1.5% per month or the highest rate permitted by Law, calculated daily and compounded monthly. If Buyer fails to make any payment when due, Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys’ fees and costs. If, in Seller’s judgment, the financial condition of Buyer does not justify continuance on the then terms of payment, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.
5. **FREIGHT.** Unless agreed by Seller in writing, all shipments shall be F.O.B. origin. Risk of loss or damage to Goods shall pass to Buyer upon being made available at the F.O.B. point.
6. **DELIVERY.** Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Seller shall not be liable for any claim, Loss, expense, or damage of any kind whatsoever for delays, loss or damage in transit.
7. **INSPECTION.** Buyer shall inspect the Goods upon arrival and notify Seller in writing within 3 days of any claims that the Goods do not conform to Seller’s warranty for such Goods. Failure to give such written notice during such period will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer of all Goods.
8. **CHANGES.** Changes in specifications or designs relating to any products, changes in delivery schedules or reschedules or cancellations of orders are not permitted unless Seller has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by the Buyer.
9. **RETURNS.** Goods may not be returned without prior written authorization by Seller and compliance with Seller’s return policies and procedures.
10. **STORAGE.** If, because of Buyer’s inability to take delivery, the Goods are not shipped, stopped in transit or returned, Seller may store them for Buyer at Buyer’s expense and risk and risk of loss shall pass to Buyer when the Goods are placed in storage and such date shall be the date of shipment for purposes of beginning the warranty and payment periods.
11. **LIMITED WARRANTIES.** Seller warrants the Goods in accordance with its express written limited warranty covering the Goods in effect at the time of purchase. **THIS IS SELLER’S ONLY WARRANTY AND PROVIDES BUYER’S SOLE REMEDIES. SELLER MAKES NO OTHER EXPRESS WARRANTIES AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.** Any claims not made during the warranty period are deemed waived by Buyer. Seller’s warranty does not attach to Goods or parts not manufactured by Seller. Seller will pass on to Buyer the warranty, if any, it receives from the manufacturer of such Goods or part, but only to the extent allowed by such manufacturer.
12. **LIMITATIONS. IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE GOODS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNT PAID TO SELLER FOR THE PORTION OF THE GOODS WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED.** Any contract created between the Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer, and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR LOSS OF USE, REVENUE OR PROFIT OR FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES OR EXPENSES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
13. **INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys’ fees) (collectively, “Losses”), arising out of or relating to: (a) Buyer’s or its agents provided specifications, design, structure, operation, material or method of making Goods including (“Buyer’s

Specifications”), without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer’s use, misuse or disposal of Goods or materials; (c) Buyer’s non-compliance with any Law; (d) breach of these Terms by Buyer; and (e) Goods subjected to: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Goods; (v) repairs or modifications made to all or part of the Goods without the prior written consent of Seller; or (vi) a use or application other than or varying in any degree from the specifications and Seller’s instructions.

14. **CONFIDENTIALITY.** All non-public, confidential or proprietary information of Seller is confidential, solely for the use in performing hereunder and may not be disclosed, used or copied unless authorized in advance by Seller in writing.
15. **FORCE MAJEURE.** Seller shall not be liable for any delay in or failure to perform due to any cause, matter or contingency beyond its reasonable control.
16. **TERMINATION.** Seller shall have the right to cease work or terminate any purchase order, in whole or in part, at any time, without liability, if: (i) Buyer breaches or defaults under these Terms or any other agreement it has with Seller including for failing to pay any amount when due; (ii) a petition under any applicable Law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit or creditors; (iv) a receiver is appointed for Buyer or any substantial part of its assets; or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer’s ability to perform and Buyer is unable to provide Seller with adequate assurance within ten days after written request therefore by Seller.
17. **WAIVER.** No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
18. **MISCELLANEOUS.** If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Buyer shall not assign any of its rights or obligations hereunder without Seller’s prior written consent. There are no third-party beneficiaries. In all cases, Seller’s rights are cumulative, are not exclusive and in addition to all other rights and remedies it may have at law or in equity. These Terms shall be construed in accordance with the laws of the State of Georgia without regard to any rules on conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. Provisions which by their nature should survive will remain in force after any termination or expiration. Headings are included solely for the convenience of the parties.

## TELEMATICS TERMS AND CONDITIONS

**Monitoring System.** Trackmobile® mobile railcar movers may be equipped with a remote monitoring system (“Monitoring System”). The Monitoring System may provide Trackmobile LLC, its affiliates and their respective agents and suppliers a variety of information regarding your Trackmobile® railcar mover including, without limitation, location information, run hours, impact/collision information, diagnostic and performance information and engine and transmission data. The Monitoring System does not gather or report all conditions that may affect the operation of your Trackmobile® mobile railcar. A Monitoring System is not a replacement for using safe operating procedures. Use of the Monitoring System and its associated services (collectively, the “Services”) may be subject to additional terms and conditions in effect from time to time.

**Information and Privacy.** The Monitoring System collects, uses, and shares information from and about your Trackmobile® railcar mover. You acknowledge that Trackmobile is the owner of all such information and you hereby consent to Trackmobile’s and its affiliates, agents and contractors collection of such information, as well as Trackmobile’s use, transfer and sharing of such information with its affiliates, agents and contractors as well as any purchaser of the business to which the Services relate, regardless of whether your Trackmobile® railcar mover has an active subscription or not.

**Subscription.** A fee may be required in order for you to use or access the Services. Your Trackmobile® railcar mover may have included or in the future you may be offered a trial period for the Services (“Trial Services”). Your access and use of the Trial Services will automatically cease without notice at the end of the Trial Services period. You may continue the Services by arranging payment for the Services. The Monitoring System and monitoring data may be available to Trackmobile even though you do not have an active subscription. Subscriptions may be subject to additional terms and conditions in effect from time to time.

**Availability.** Some or all of the Services may or may not be active or available at any particular time or at any particular place.

**Disclaimer of Warranties.** THE MONITORING SYSTEM AND ASSOCIATED SERVICES ARE PROVIDED “AS IS,” “IF AND AS AVAILABLE” AND “WITH ALL FAULTS.” TRACKMOBILE® AND ITS SUPPLIERS MAKE NO EXPRESS REPRESENTATIONS OR WARRANTIES AND HEREBY DISCLAIM ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, AVAILABILITY AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. TRACKMOBILE MAY DISCONTINUE THE SERVICES AT ANY TIME. TRACKMOBILE DOES NOT PROVIDE ANY WARRANTY AS TO THE AVAILABILITY OF THE SERVICES OR THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE.

**Modification to Agreement.** Trackmobile may modify this Agreement by giving You notice or by asking You to read and accept a new version of this Agreement. We may give You notice by posting a new version of the Agreement on the Website. If You do not agree with any modification, then You may not use the Services. Your continued access or use of any of the Services after Trackmobile’s notice indicates your acceptance to the modified Agreement.