

# GENERAL CONDITIONS OF SALE

Wattman USA Inc., est. in Cape Coral, FL33904, United States.

## Article 1 – Definitions

Unless otherwise clearly demonstrated by the context, the following terms have the meanings specified below:

1. **WU:** Refers solely to Wattman USA Inc., a Florida corporation, and does not include its shareholders, directors, officers, employees, agents, or affiliates unless expressly stated in a specific provision of these Conditions.
2. **Client:** The individual or legal entity entering into an Agreement with WU for the purchase, rental, or provision of Products or services.
3. **Offer:** A proposal or quotation issued by WU for the provision of goods and/or services.
4. **Judicial and Extrajudicial Expenses:** All costs incurred in the enforcement or collection of any amounts owed under the Agreement, including attorneys' fees, court costs, arbitration or mediation fees, expert fees, and collection agency expenses.
5. **Order Confirmation:** The written or electronic confirmation issued by WU confirming acceptance of an Order.
6. **Agreement:** A legally binding contract executed between WU and the Client for the provision of goods or services.
7. **Parties:** Refers collectively to WU and the Client.
8. **Price:** The sale price of a product or service as detailed on the invoice, exclusive of all applicable taxes, duties, tariffs, shipping charges, and governmental fees.
9. **Products:** All goods sold by WU and any related services expressly described in the applicable Order Confirmation.
10. **Conditions of Transport:** Delivery terms shall be interpreted in accordance with the applicable Incoterms version expressly stated in the Order Confirmation. In the absence of such specification, delivery shall be governed by the Uniform Commercial Code as adopted in the State of Florida. Nothing herein shall override mandatory provisions of applicable U.S. federal or state transportation laws.
11. **Provisional Agreement:** A temporary or conditional agreement for the supply of goods or services between WU and the Client.
12. **Conditions:** Refers to the present General Terms and Conditions of Sale of WU, which apply to all agreements, transactions, and interactions between WU and the Client unless explicitly stated otherwise and agreed to in writing. These Conditions constitute the entire terms governing the transaction unless otherwise agreed in writing.

13. **Assured Value Program:** A voluntary ownership program offered exclusively by WU to eligible Clients located within the continental United States (48 contiguous states and the District of Columbia) for Products sold under the Wattman brand by WU. The Assured Value Program is governed by a separate Assured Value Program Agreement between WU and the Client. The Assured Value Program and all rights thereunder are non-transferable and may not be assigned by the Client to any third party without the prior written consent of WU.

## **Article 2 – Applicability**

1. These Conditions apply to all Offers, Quotations, Provisional Agreements, Order Confirmations, Agreements, and any other legal relationships relating to the sale and delivery of Products and services by WU to the Client.
2. These Conditions apply exclusively to commercial transactions between business entities. They do not apply to consumer transactions.
3. Acceptance of any Offer or delivery of Products is expressly conditioned upon the Client's agreement to these Conditions. Any additional, different, or conflicting terms proposed by the Client, including but not limited to terms contained in purchase orders or other documents, are hereby expressly rejected and shall be of no force or effect unless expressly agreed to in writing by an authorized officer of WU.
4. No deviation from, modification of, or addition to these Conditions shall be binding unless expressly agreed to in writing and signed by an authorized officer of WU. Electronic signatures shall be deemed valid for this purpose.
5. These Conditions, together with the applicable Order Confirmation, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral or written representations, negotiations, understandings, or agreements.
6. If any provision of these Conditions is found to be invalid, unenforceable, or otherwise void, such provision shall be severed and replaced by a valid provision that most closely reflects the intent and purpose of the invalid provision. The remaining provisions shall remain in full force and effect.

## **Article 3 – Offers, Quotations, Provisional Agreements, and Orders**

1. All Offers, Quotations, and Provisional Agreements issued by WU are non-binding and shall constitute invitations to negotiate unless expressly stated in writing to be a "firm offer" signed by an authorized officer of WU. No Offer shall be binding upon WU until accepted in writing by WU through an Order Confirmation.
2. Orders submitted by the Client shall constitute an offer to purchase and shall not become binding upon WU until accepted in writing by WU. WU reserves the right to reject any Order in whole or in part in its sole discretion.
3. WU reserves the right to revoke, withdraw, or amend any Offer or Quotation at any time prior to written acceptance by WU, including in the event of changes in cost, availability, specifications, tariffs, transportation costs, or other commercial conditions.
4. Any descriptions, depictions, illustrations, technical data, performance estimates, or marketing materials provided by WU are for informational purposes only and shall not constitute an express warranty, representation, or guarantee unless expressly incorporated into the applicable Order Confirmation in writing. The Client acknowledges that it has not relied upon any statements or representations not expressly set forth in the Agreement.

## Article 4 – Agreements

1. No Agreement shall be binding upon WU unless and until it is confirmed in writing through an Order Confirmation issued by WU. No oral statement, representation, or commitment by any employee or representative of WU shall create a binding Agreement or modify any Agreement unless confirmed in writing by an authorized officer of WU.
2. Once an Order Confirmation has been issued, any modification to the Agreement must be agreed upon in writing and signed by an authorized officer of WU. WU reserves the right to adjust delivery schedules, specifications, or pricing prior to shipment in the event of changes in cost, availability, tariffs, transportation costs, regulatory requirements, or other commercial circumstances beyond WU's reasonable control.
3. WU's obligations under any Agreement are limited to delivering the Products or performing the services as expressly described in the applicable Order Confirmation. WU does not warrant or guarantee that the Products or services will achieve any particular business result, performance objective, or purpose unless expressly stated in writing in the Order Confirmation.
4. No actions, agreements, settlements, or representations made between the Client and any third party, including the Client's employees, agents, contractors, or customers, shall bind WU unless expressly agreed to in writing by an authorized officer of WU.
5. WU may subcontract all or part of the performance of the Agreement to qualified third parties. WU shall remain responsible for performance of the Agreement, subject to the limitations of liability set forth in these Conditions. Nothing herein shall create joint liability between WU and any subcontractor unless expressly agreed in writing.

## Article 5 – Prices

1. All prices are:
  - (i) net and exclusive of all applicable federal, state, or local taxes, duties, tariffs, customs charges, transportation costs, insurance, storage, installation, and other governmental or regulatory fees; (ii) based on the delivery terms specified in the applicable Order Confirmation; and (iii) determined in accordance with the prices and specifications in effect on the date of the Order Confirmation.
2. Unless otherwise expressly agreed in writing, all Prices are quoted and payable in United States Dollars (USD). Payment shall be made in the currency stated on the invoice.
3. If the Agreement specifies pricing in Euros (EUR) or Canadian Dollars (CAD), the invoiced amount shall be converted into USD based on the exchange rate published by a nationally recognized financial institution selected by WU on the date payment is received. The Client bears all risks associated with currency fluctuations.
4. WU shall apply an objectively verifiable exchange rate source (such as a published bank rate or financial market rate) in effect on the date payment is received.
5. The following costs are excluded from the Price unless expressly included in the Order Confirmation and shall be charged separately:
  - a) Freight, transportation, insurance, warehousing, storage, installation, commissioning, and handling costs;
  - b) Customs duties, tariffs, import or export fees, and any similar governmental charges;
  - c) Costs arising from changes in applicable laws, regulations, or governmental measures.

6. Any additional costs under this Article shall be itemized in the applicable invoice or Order Confirmation.
7. Prices previously quoted or applied do not establish any continuing obligation on WU to maintain such prices for future transactions.
8. In the event of any increase in tariffs, import duties, customs fees, transportation costs, raw material costs, or other government-imposed or commercially significant cost increases occurring before delivery of the Products, WU reserves the right to adjust the Price accordingly. Such adjustment shall be commercially reasonable and documented upon request.

#### **Article 6 – Delivery and Risk of Loss**

1. Delivery terms shall be as specified in the applicable Order Confirmation and interpreted in accordance with the agreed Incoterms, if any. In the absence of a specified Incoterm, delivery shall be deemed FOB shipping point under the Uniform Commercial Code as adopted in the State of Florida.
2. Risk of loss and title shall transfer to the Client in accordance with the applicable delivery term specified in the Order Confirmation, regardless of any retention of title by WU pursuant to Article 9.
3. Transportation of the Products to the agreed place of delivery shall be conducted in accordance with the Conditions of Transport stipulated in the Order Confirmation.
4. A clean bill of lading or carrier receipt issued at the time of shipment shall constitute prima facie evidence that the Products were delivered to the carrier in good condition, except to the extent transport damage is clearly noted on the carrier's documentation at the time of delivery.
5. The Client assumes full responsibility for any damage to the Products, property damage, personal injury, regulatory violations, or other losses arising out of unloading activities conducted by the Client or its subcontractors. The Client shall indemnify, defend, and hold harmless WU from any such claims, including reasonable attorneys' fees and defense costs.
6. The Client shall maintain adequate insurance coverage for unloading operations and related risks.
7. Delivery dates are estimates unless expressly guaranteed in writing. WU shall not be liable for delays caused by circumstances beyond its reasonable control, including but not limited to carrier delays, supply chain disruptions, governmental actions, labor disputes, weather events, or force majeure events.
8. If the Client fails to take delivery of the Products within thirty (30) days after notification of availability, WU may store the Products at the Client's risk and expense. Storage fees shall accrue at a rate of \$100.00 per day. The Parties acknowledge that this amount represents a reasonable estimate of storage and administrative costs and is not a penalty. WU may adjust the daily storage rate from time to time upon thirty (30) days written notice to the Client.
9. If the Products remain uncollected for more than one hundred eighty (180) days, WU reserves the right, upon written notice to the Client, to resell or otherwise dispose of the Products in a commercially reasonable manner. Any proceeds shall be applied to outstanding amounts owed, including storage and related costs, with any deficiency remaining payable by the Client.

## **Article 7 – Security Interest and Ownership**

1. WU reserves the right to conduct reasonable due diligence regarding the Client's financial condition prior to or during performance of the Agreement. WU may suspend performance if it reasonably determines that the Client's ability to pay is impaired.
2. Notwithstanding delivery of the Products, title to and ownership of the Products shall remain with WU until full payment of all amounts due under the Agreement has been received. To the extent that retention of title is deemed to create a security interest under applicable law, the Client hereby grants WU a first-priority purchase money security interest in the Products and all proceeds thereof until payment in full has been made.
3. The Client authorizes WU to file any financing statements (UCC-1) or other documents necessary to perfect or protect WU's security interest without the Client's signature to the extent permitted by law. The Client agrees to execute any additional documents reasonably requested by WU to perfect such interest.
4. Until full payment has been received, the Client shall:
  - a) Keep the Products free from liens, encumbrances, and security interests other than WU's;
  - b) Not sell, lease, transfer, or otherwise dispose of the Products without WU's prior written consent;
  - c) Maintain the Products in good condition and adequately insured;
  - d) Promptly notify WU of any third-party claims or legal actions affecting the Products.
5. Upon any default in payment or other material breach of the Agreement, WU shall have all rights and remedies available under the Uniform Commercial Code and applicable law, including the right to enter the Client's premises without breach of the peace to repossess the Products and to dispose of them in a commercially reasonable manner.
6. The Client shall be responsible for all reasonable costs incurred by WU in enforcing its security interest, including attorneys' fees, court costs, repossession costs, storage costs, and resale expenses.

## **Article 8 – Payment**

1. The Client shall pay all invoices in full, without setoff, deduction, counterclaim, or withholding of any kind, within seven (7) calendar days from the invoice date unless otherwise specified in the Order Confirmation. Payment shall be made:
  - (i) in the currency stated on the invoice;
  - (ii) in strict compliance with the payment terms stated on the invoice; and
  - (iii) to the bank account designated by WU.

Failure to dispute an invoice in writing within five (5) business days of receipt shall constitute acceptance of the invoice.
2. Unless otherwise specified in the Order Confirmation, full payment shall be due no later than the date of delivery of the Products or completion of the services.
3. WU may require deposits or installment payments as specified in the Order Confirmation. The Client shall timely remit such payments as a condition of continued performance by WU.
4. The entire unpaid balance of the Agreement shall become immediately due and payable, at WU's option and to the extent permitted by applicable law, upon the occurrence of any of the following:

- a) Failure to make timely payment;
- b) Insolvency, bankruptcy filing, or appointment of a receiver;
- c) Assignment for the benefit of creditors;
- d) Dissolution or cessation of business;
- e) Seizure, levy, or attachment of substantial assets; or
- f) Any material breach of the Agreement.

WU shall provide written notice of default and a five (5) business day opportunity to cure prior to acceleration, except where prohibited by law or rendered impracticable due to insolvency proceedings.

- 5. Any past-due amounts shall accrue interest at the rate of 1.5% per month (18% per annum) or the maximum rate permitted by applicable law, whichever is less, calculated from the due date until paid in full.
- 6. The Client shall be liable for all reasonable costs of collection and enforcement, including attorneys' fees, court costs, expert fees, repossession costs, and collection agency fees.
- 7. Payments received shall be applied, at WU's discretion, first to accrued interest, then to costs and fees, and finally to outstanding principal balances, irrespective of any contrary designation by the Client.

#### **Article 9 –Retention of Title and Protection of Security Interest**

- 1. The provisions of this Article are intended to supplement and be interpreted consistently with Article 7 (Security Interest). To the extent that retention of title is recognized under applicable law, title to the Products shall remain with WU until full payment has been received. Where such retention constitutes a security interest under the Uniform Commercial Code, the provisions of Article 7 shall govern.
- 2. Until full payment of all amounts due, the Client shall:
  - a) Maintain the Products in good condition and adequately insured against loss or damage in an amount not less than the unpaid balance owed under the Agreement, naming WU as loss payee where commercially reasonable;
  - b) Keep the Products free from any liens, encumbrances, or security interests other than WU's purchase money security interest;
  - c) Not sell, lease, transfer, pledge, or otherwise dispose of the Products outside the ordinary course of business without WU's prior written consent;
  - d) Promptly notify WU in writing of any third-party claim, lien, levy, attachment, or legal process affecting the Products.
- 3. To the extent the Client resells the Products in the ordinary course of business prior to full payment, all identifiable proceeds of such sale shall constitute proceeds of WU's security interest under Article 7 and shall be held by the Client subject to WU's rights under the Uniform Commercial Code.
- 4. Upon default as defined in Article 8 or Article 7, WU shall have all rights and remedies available under the Uniform Commercial Code and applicable law, including the right to repossess the Products without breach of the peace and to dispose of them in a commercially reasonable manner.
- 5. The Client shall indemnify and hold WU harmless from any loss, cost, or expense arising from third-party claims asserting rights inconsistent with WU's security interest, including reasonable attorneys' fees and enforcement costs.

6. Nothing in this Article shall be construed to waive or limit any rights or remedies available to WU under Article 7, the Uniform Commercial Code, or other applicable law.

Where the Client has entered into a financing arrangement with a finance partner recognized or referred by WU, and such financing arrangement remains in good standing, the Client's rights under any applicable Assured Value Program Agreement shall be exercisable by the Client as the operational user of the Products, irrespective of whether legal title to the Products is held by the finance partner during the term of the financing arrangement. This provision does not create any obligation on the part of the finance partner, nor does it modify any security interest held by the finance partner. The Assured Value Program is available exclusively to Clients located within the continental United States (48 contiguous states and the District of Columbia) and is non-transferable.

#### **Article 10 – Warranties, Verification, Claims**

1. Upon delivery of the Products, WU assigns to the Client any applicable manufacturer warranties solely to the extent permitted by the manufacturer. WU does not provide any independent warranty and shall have no obligation under any manufacturer warranty other than facilitating communication between the Client and the manufacturer, where appropriate.
2. The Products may be covered by the New Train Limited Warranty issued exclusively by Wattman Trains & Trams Inc., the manufacturer of the Products. Such warranty, if applicable, is provided solely by Wattman Trains & Trams Inc. in accordance with its terms and conditions. WU is not the manufacturer of the Products and assumes no warranty obligations beyond those expressly stated in this Agreement.

#### **DISCLAIMER OF WARRANTIES**

EXCEPT FOR ANY EXPRESS WARRANTY ISSUED SOLELY BY THE MANUFACTURER, THE PRODUCTS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS." WU MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED UNDER APPLICABLE LAW, SUCH WARRANTY IS LIMITED IN DURATION TO THE SHORTEST PERIOD PERMITTED BY LAW.

#### **ASSURED VALUE PROGRAM EXCEPTION**

Notwithstanding the foregoing disclaimer, where the Client has entered into a separate Assured Value Program Agreement with WU, WU may assume additional warranty obligations as expressly set forth in that agreement. Such obligations are independent of, and in addition to, any manufacturer warranty and are governed exclusively by the terms and conditions of the Assured Value Program Agreement. The Assured Value Program is available exclusively to Clients located within the continental United States (48 contiguous states and the District of Columbia). All rights under the Assured Value Program, including any trade-in credits, extended warranty coverage, and upgrade entitlements, are personal to the original Client and are non-transferable. Any purported assignment or transfer of Assured Value Program rights without the prior written consent of WU shall be void and of no effect.

3. Transport damage must be reported in writing to both the carrier and WU within twenty-four (24) hours of receipt of the Products. The Client must:
  - a) Note the damage on the delivery receipt before signing;
  - b) Take clear photographs of the shipment and the specific damage;
  - c) Take reasonable steps to prevent further damage.

Failure to comply with these requirements shall constitute a waiver of any claim against WU relating to transport damage.

4. If transport-related damage is not reasonably discoverable upon delivery but is discovered thereafter, the Client must notify WU in writing within forty-eight (48) hours of discovery and provide supporting photographic evidence. Failure to comply shall constitute a waiver of such claim.
5. The Client shall promptly inspect the Products upon receipt for conformity with the Agreement. Any non-conformity must be reported in writing within five (5) calendar days of delivery. Failure to provide timely written notice shall constitute irrevocable acceptance of the Products and waiver of any non-conformity claim.
6. Receipt of a claim by WU does not constitute acknowledgment of liability, acceptance of a warranty claim, or extension of any warranty period.
7. If it is established within the applicable notification period that a Product has transport damage or a manufacturing defect, WU may, at its sole discretion and as a commercial courtesy only, assist the Client in communicating with the carrier or the manufacturer. Such assistance shall not constitute an assumption of liability or an agreement to bear any associated costs.
8. The Client shall be deemed to have accepted the Product and waived any claims if the Client:
  - a) Places the Product into service;
  - b) Uses or operates the Product;
  - c) Transfers possession to a third party; or
  - d) Takes any action inconsistent with rejection of the Product under the Uniform Commercial Code.

Notwithstanding the foregoing, acceptance by use shall not constitute a waiver of claims for latent manufacturing defects that are not reasonably discoverable through visual inspection or standard operational testing at the time of delivery, provided the Client notifies WU in writing within forty-eight (48) hours of discovery of such defect.

#### **Article 11 – Limitation of Liability**

1. WU's total aggregate liability arising out of or relating to the Agreement, the Products, or any services provided shall not exceed the amount actually recovered and paid under the applicable liability insurance policy maintained by Wattman Trains & Trams Inc., under which WU is listed as an additional insured, for the specific occurrence giving rise to the claim, net of defense costs and subject to the applicable deductible.

In the event the policy referenced in Section 11.1 is modified, reduced, or terminated by the manufacturer without prior notice to the Client, WU's liability shall not be reduced below the fallback cap set forth in Section 11.2.

2. If no payment is made under the policy referenced in Section 11.1 for any reason, including denial of coverage, WU's total aggregate liability for all claims arising out of the same occurrence or related series of occurrences shall be limited to the lesser of:
  - (i) the invoice value of the Product giving rise to the claim; or
  - (ii) \$75,000.00.

The limitations of liability set forth in Sections 11.1 and 11.2 shall not apply to WU's obligation to honor trade-in credits or other contractual commitments expressly undertaken by WU under a separate Assured Value Program Agreement. Such obligations constitute independent contractual payment commitments and are not subject to the aggregate liability caps set forth in this Article. The Assured Value Program is available exclusively to Clients located within the continental United States (48 contiguous states and the District of Columbia) and all rights thereunder are non-transferable.

3. The limitations set forth in Sections 11.1 and 11.2 shall apply to the fullest extent permitted by law and shall survive any failure of essential purpose of any limited remedy.

4. WU's liability is strictly limited to direct damages. Direct damages are defined as reasonable, demonstrable, and necessary costs directly and proximately caused by WU's material breach of the Agreement. Direct damages shall not include speculative damages or any damages not directly traceable to WU's breach.
5. IN NO EVENT SHALL WU BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION, LOSS OF GOODWILL, OR DELAY DAMAGES, EVEN IF WU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. The exclusions and limitations of liability set forth in this Article shall apply regardless of the form of action, whether in contract, tort (including negligence), strict liability, statute, or otherwise.
7. The limitations of liability in this Article shall not apply to damages resulting from WU's willful misconduct or gross negligence, to the extent such limitation is prohibited by applicable law.
8. WU exercises reasonable care when engaging subcontractors or utilizing equipment, software, programs, databases, registers, or other third-party tools. HOWEVER, WU SHALL NOT BE LIABLE FOR ANY DEFECTS, ERRORS, MALFUNCTIONS, OR FAILURES CAUSED SOLELY BY SUCH THIRD PARTIES OR TOOLS, EXCEPT TO THE EXTENT CAUSED BY WU'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

#### **Article 12 – Force Majeure**

1. "Force Majeure" means any event or circumstance beyond WU's reasonable control that prevents or materially delays performance of its obligations under the Agreement, including but not limited to acts of God; war; terrorism; civil unrest; natural disasters; fire; flood; epidemic or pandemic; governmental actions or regulatory changes; labor disputes; supply chain disruptions; cyberattacks; transportation interruptions; or failure of critical suppliers not caused by WU's gross negligence.
2. Upon the occurrence of a Force Majeure event, WU's performance shall be suspended for the duration of the event to the extent performance is prevented or materially delayed. WU shall provide written notice to the Client within a commercially reasonable time after becoming aware of the Force Majeure event.
3. WU shall use commercially reasonable efforts to mitigate the impact of the Force Majeure event and to resume performance as soon as practicable.
4. If a Force Majeure event continues for more than ninety (90) consecutive days and materially affects performance, WU may terminate the affected portion of the Agreement upon written notice to the Client. Prior to termination, the Parties shall consult in good faith to explore commercially reasonable alternatives.

5. In the event of termination under this Article:
  - a) The Client shall pay for all Products delivered and services performed prior to termination;
  - b) WU shall be entitled to reimbursement for all documented and reasonable costs incurred in connection with performance of the Agreement up to the termination date;
  - c) WU shall not be liable for any delay, non-performance, or damages arising from the Force Majeure event.
6. If performance of the Agreement becomes impossible or materially delayed due to the Client's actions or omissions, WU shall be entitled to full payment of the agreed Price, less any direct cost savings demonstrably realized due to non-performance.

### **Article 13 – Intellectual Property**

1. WU and its suppliers retain all right, title, and interest in and to all intellectual property rights associated with the Products, services, software, firmware, designs, drawings, specifications, documentation, trademarks, trade names, trade dress, and related materials provided under the Agreement. Nothing in the Agreement shall be construed as transferring or assigning any intellectual property rights to the Client.
2. The Client is granted a limited, non-exclusive, non-transferable right to use the Products solely for their intended commercial purpose. No license is granted to reproduce, distribute, modify, adapt, create derivative works from, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or design of any Product, software, firmware, controller system, or related component without prior written consent from WU.
3. The Client shall not remove, alter, obscure, or modify any proprietary notices, labels, trademarks, or serial numbers affixed to the Products.
4. Any unauthorized modification, tampering, reprogramming, or reverse engineering of the structural, electrical, drivetrain, or electronic control systems of the Products, including software or firmware components, shall void any applicable warranty and may result in immediate termination of the Agreement.
5. The Client shall promptly notify WU in writing within ten (10) business days of becoming aware of any actual or alleged infringement claim relating to the Products. The Client shall not admit liability or enter into any settlement relating to such claim without WU's prior written consent.
6. WU makes no representation that the Products do not infringe third-party intellectual property rights. Any defense or indemnification related to intellectual property infringement shall be governed solely by the manufacturer's applicable warranty, if any.
7. Any confidential or proprietary information provided by WU to the Client shall remain confidential and shall not be disclosed to third parties without prior written consent.

### **Article 14 – Limitation of Actions**

1. Any warranty claim relating to a Product covered by the manufacturer's New Train Limited Warranty shall be governed exclusively by the terms, limitations, and claim procedures set forth in that warranty.
2. Any other claim, demand, action, or proceeding arising out of or relating to the Agreement, the Products, or any services provided by WU — whether in contract, tort (including negligence), strict liability, statute, or otherwise — shall be commenced within one (1) year from the date of delivery of the Product giving rise to the claim, regardless of the date the alleged breach or injury was discovered, to the fullest extent permitted by applicable law.

3. The Parties expressly agree, pursuant to Section 2-725 of the Uniform Commercial Code as adopted in the State of Florida, to reduce the applicable statute of limitations for such claims to one (1) year.

The limitation periods set forth in this Article shall not apply to claims arising under a separate Assured Value Program Agreement between WU and the Client. Claims under the Assured Value Program, including trade-in credit claims and extended warranty claims, shall be governed by the limitation periods expressly stated in the applicable Assured Value Program Agreement. The Assured Value Program is available exclusively to Clients located within the continental United States (48 contiguous states and the District of Columbia) and all rights thereunder are non-transferable.

4. Failure to commence an action within the time period specified above shall constitute a complete and absolute bar to the claim.
5. This limitation of actions shall apply to the maximum extent permitted by law and shall survive termination or expiration of the Agreement.

#### **Article 15 – Hold Harmless**

1. The Client shall indemnify, defend, and hold harmless WU, its officers, directors, employees, and agents from and against any and all third-party claims, demands, actions, liabilities, damages, losses, judgments, settlements, fines, penalties, costs, and expenses (including reasonable attorneys' fees and defense costs) arising out of or relating to:
  - a) The Client's use, operation, storage, transportation, or resale of the Products;
  - b) The Client's breach of the Agreement;
  - c) The Client's violation of applicable laws or regulations;
  - d) Any modification, alteration, misuse, or unauthorized repair of the Products; or
  - e) Injury, property damage, or other loss occurring after risk of loss has transferred to the Client.

This indemnification shall not apply to the extent that a claim is caused solely by WU's gross negligence or willful misconduct.

2. The Client shall also indemnify and hold harmless WU from any governmental fines, penalties, regulatory actions, or assessments arising from the Client's operation, use, licensing, permitting, or regulatory non-compliance relating to the Products.
3. The Client's indemnification obligations include the duty to defend WU upon written notice of a claim. WU shall have the right to participate in the defense with counsel of its choice at its own expense. The Client shall not settle any claim affecting WU without WU's prior written consent, which shall not be unreasonably withheld.
4. If the Client fails to promptly assume or adequately conduct the defense of a claim, WU may undertake the defense and the Client shall reimburse all reasonable costs and expenses incurred by WU in connection therewith.
5. The indemnification obligations set forth in this Article shall survive termination or expiration of the Agreement and shall apply independently of any limitation of liability set forth elsewhere in these Conditions.

## **Article 16 – Termination of the Agreement**

### **1. Termination by Mutual Written Agreement or Client Cancellation**

a) The Agreement may be terminated in whole or in part by mutual written agreement of the Parties.

b) If the Client cancels the Agreement for convenience after acceptance by WU, the Client shall pay a cancellation fee as liquidated damages, calculated as follows:

(i) Ten percent (10%) of the total Agreement amount if cancellation occurs within thirty (30) days of the Agreement date; or

(ii) Twenty-five percent (25%) of the total Agreement amount if cancellation occurs more than thirty (30) days after the Agreement date.

The Parties acknowledge that these amounts represent a reasonable estimate of WU's anticipated damages, administrative costs, allocation of production capacity, and lost business opportunity, and are not intended as a penalty.

c) If WU can demonstrate that its actual documented costs exceed the applicable cancellation fee, the Client shall be liable for such additional reasonable and documented costs.

d) Deposits paid by the Client shall be applied against cancellation fees and accrued amounts. Any portion exceeding such amounts shall be refundable unless otherwise expressly stated in the Order Confirmation.

### **2. Termination for Cause**

Either Party may terminate the Agreement upon written notice if the other Party materially breaches the Agreement and fails to cure such breach within ten (10) business days after receiving written notice specifying the breach.

### **3. Immediate Termination Due to Insolvency**

Subject to applicable bankruptcy laws and automatic stay provisions, either Party may terminate the Agreement upon written notice if the other Party:

- a) Files for bankruptcy or is declared insolvent;
- b) Has a receiver appointed;
- c) Makes an assignment for the benefit of creditors; or
- d) Ceases substantial business operations.

In such cases, WU shall be entitled to payment for all Products delivered, services performed, and documented costs incurred prior to termination.

Termination or cancellation of the Agreement shall not affect, terminate, or modify the rights and obligations of the Parties under any separate Assured Value Program Agreement, unless expressly provided in that agreement. For the avoidance of doubt, trade-in credits earned under the Assured Value Program shall survive termination of the Agreement to the extent the Client has satisfied all conditions for eligibility under the Assured Value Program Agreement. The Assured Value Program is available exclusively to Clients located within the continental United States (48 contiguous states and the District of Columbia) and all rights thereunder are non-transferable.

Notwithstanding the foregoing, all rights under the Assured Value Program, including accrued trade-in credits, shall automatically terminate upon the occurrence of any insolvency event described in Section 16.3 with respect to the Client.

#### **4. Effect of Termination**

- a) Termination shall not relieve the Client of the obligation to pay for Products delivered or services performed prior to termination.
- b) WU's liability for undelivered Products shall be limited to refund of amounts actually paid for such undelivered Products, subject to any applicable cancellation fees.
- c) WU shall not be liable for consequential, incidental, or indirect damages arising from termination.
- d) All provisions relating to payment obligations, limitation of liability, indemnification, intellectual property, and limitation of actions shall survive termination.

#### **Article 17 – Jurisdiction and Disputes**

- 1. These Conditions, and all Offers, Quotations, Provisional Agreements, Order Confirmations, Agreements, and other legal relationships governed in whole or in part by these Conditions, shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of law principles.
- 2. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded and shall not apply.
- 3. As a condition precedent to initiating litigation, the Parties shall attempt in good faith to resolve any dispute through non-binding mediation. Either Party may initiate mediation by providing written notice of dispute. Mediation shall be conducted in Lee County, Florida, with costs shared equally between the Parties. If mediation does not resolve the dispute within sixty (60) days of such notice, either Party may commence litigation in accordance with this Article.
- 4. The Parties agree that the state courts of Florida located in the county where WU maintains its principal place of business, or the United States District Court for the appropriate federal district in Florida, shall have exclusive jurisdiction over all disputes arising out of or relating to the Agreement.
- 5. Each Party irrevocably submits to the personal jurisdiction of such courts and waives any objection based on improper venue or forum non conveniens.
- 6. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE PRODUCTS.
- 7. No claim may be brought as a class action, collective action, consolidated action, or representative proceeding. Each Party agrees that disputes shall be resolved solely on an individual basis.
- 8. Notwithstanding the foregoing, WU may seek temporary, preliminary, or permanent injunctive or equitable relief in any court of competent jurisdiction to protect its intellectual property rights, confidential information, or security interests.

## **Article 18 – Notices**

All notices, demands, requests, and other communications required or permitted under these Conditions or any Agreement shall be in writing and shall be deemed duly given: (a) upon personal delivery; (b) one (1) business day after deposit with a nationally recognized overnight courier service, prepaid; (c) three (3) business days after mailing by certified or registered mail, return receipt requested, postage prepaid; or (d) upon confirmed transmission if sent by email to an address previously designated in writing by the receiving Party for the purpose of receiving notices. Notices shall be directed to the addresses set forth in the applicable Order Confirmation or to such other address as a Party may designate by written notice in accordance with this Article.

## **Article 19 – Assignment**

The Client may not assign, transfer, or delegate this Agreement or any rights or obligations hereunder, in whole or in part, without the prior written consent of WU, which consent may be withheld in WU's sole discretion. Any attempted assignment in violation of this provision shall be void and of no effect. WU may assign this Agreement, in whole or in part, to any affiliate or successor entity without the Client's consent, provided that such assignment does not materially diminish the Client's rights under the Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

## **Article 20 – No Waiver**

No failure or delay by WU in exercising any right, power, or remedy under these Conditions or any Agreement shall operate as a waiver thereof. No single or partial exercise of any right, power, or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. No waiver shall be effective unless made in writing and signed by an authorized officer of WU. A waiver of any provision on one occasion shall not be deemed a waiver of any other provision or of such provision on any other occasion.