



**SPERRY STANDARD SALE AND SERVICE TERMS**  
**Issued January 1, 2012**  
**Updated February 1, 2014**

**SCOPE OF SERVICES**

Sperry will only perform those services specifically agreed to in writing, and will not be responsible for any matters beyond the agreed-upon, written scope of services. Any descriptions, statements, comments or expressions made reflect the opinion or observations of the Sperry examiner based solely upon data available at the time, and are not intended, nor can they be construed, as representations or warranties as to the actual circumstances. Sperry does not assume any responsibilities of its client ("Client"). Client retains complete responsibility for the safe condition and operation of its railway assets, making inspection-related decisions such as which rails to inspect, how often to perform inspections and which methods or technologies to use, and making all engineering, repair, replacement, modification and use decisions. The results of Sperry's services shall be used only for Client's internal purposes. Unless otherwise stated, Sperry will furnish at its own expense all persons, power, materials and supplies necessary to operate its equipment and to keep it in good repair. Sperry shall not be held responsible, however, for any interruptions in its service caused by accidents, necessary repairs to its equipment or any conditions not under its control. Client is responsible for furnishing all employees necessary for the expeditious movement and safety of Sperry equipment while the same is in transit or being operated upon its lines, supplying all services and materials required for safety of operation and providing, if requested by Sperry, safe tie-up facilities conducive to routine maintenance activity.

**STANDARD OF CARE - SERVICES**

Sperry tests rails in accordance with its customary standards and practices and pursuant to Sperry's specifications. ***No other warranty, expressed or implied, is made or intended by Sperry, and all other warranties are expressly disclaimed.*** In the event of any breach of this warranty, Sperry's sole and exclusive obligation will be to correct or re-perform the deficient service or, at Sperry's option, to refund the amount paid for the deficient service.

**LIMITATIONS OF LIABILITY**

Sperry does not assume any liability or responsibility for losses or damages such as personal injuries and property damage except and only to the extent directly caused by the willful or negligent misconduct of Sperry in the course of performing the requested services, subject to the limitations set forth in this paragraph. ***In no event shall Sperry's aggregate liability for any reason, in connection with any claim asserted, exceed the lesser of \$250,000 or the amount paid for the services or product in question.*** Sperry shall not be held responsible or liable for any loss, damage or delay caused by accidents, strikes, fires, floods or other circumstances or causes beyond its control, including actions taken or not taken by Client or other third parties. ***Inasmuch as all testing equipment has a certain margin of error, and in recognition of the respective roles and responsibilities of Client and Sperry, Sperry shall not be responsible for, and Client shall defend and indemnify Sperry against and for, any damage, loss, claim, injury or expense, incurred or asserted by Client or any third party, arising from or attributable to a delay in the commencement and/or reporting of testing, the failure to discover or report a defect, or the inaccurate or untimely reporting of a defect in any rail tested or not tested by Sperry, irrespective of the nature of any claim asserted. Sperry shall not under any circumstances be liable or responsible for any indirect, special, punitive, exemplary, consequential or incidental damages (including without limitation, lost profits, lost opportunity, economic loss, overhead expenses, business interruption, loss of use, lost productivity, downtime, or damage to reputation or goodwill) irrespective of the nature of any claim asserted.***

**CONFIDENTIAL INFORMATION**

"Confidential Information" means any samples, drawings, parts, products, prototypes and confidential or proprietary information or data, written or oral or in any other form, concerning or constituting the business operations, plans, products, processes, technologies, software, designs, strategies, facilities, research, finances, customers, pricing, information systems, trade secrets, development plans, commercial information, technical information and similar confidential or proprietary information or data of or belonging to Sperry. Confidential Information shall not include information or data that is in the public domain through no fault of Client or another party or that is rightfully disclosed to Client by a third party not bound by any obligations of confidentiality. Client agrees to treat all Confidential Information as confidential and specifically agrees that it



will not use Confidential Information in a manner that would be adverse to Sperry's interests, will not disclose Confidential Information to any third party without Sperry's prior written consent, will not make any copies of Confidential Information except as required in order for Sperry to provide its services to Client, will limit dissemination of Confidential Information to those employees of Client who have a legitimate need to know such information in connection with Sperry providing its services, and will not copy, reverse-engineer, decompile or disassemble any Confidential Information or permit any third party to do so. Sperry is and shall remain the exclusive owner of all Confidential Information.

### **PAYMENT AND OTHER TERMS**

Unless otherwise agreed, all days within each test period shall be working days except Sundays and Client's recognized holidays. Each working day shall commence as of the time the Sperry crew leaves the lodging facility until the time they return there, and shall be limited to a normal and reasonable number of working hours as agreed and as is consistent with the maintenance of the proper efficiency of Sperry's equipment and personnel and with the completion of each test within a reasonable period of time. Unless otherwise agreed, working days within each test period (excluding Sundays and holidays) and working hours within each working day (excluding meal time) shall be contiguous. Both Sperry and Client shall contribute to the prompt and expeditious completion of each test as may be reasonable in the circumstances. Pricing is based on Sperry's standard service techniques and protocols unless otherwise specifically stated. Any request for non-standard techniques or protocols in performing the services must be identified by Client and accepted by Sperry in writing prior to commencement. Where VAT applies, all prices and quotations are exclusive of VAT unless otherwise specifically stated. Payment in full shall be made within 30 days of the date of invoice, and thereafter a late charge of 12% at an annualized rate on outstanding accounts may be charged. Sperry also reserves the right to charge for any extra costs that are incurred as a result of delays, cancellations, or postponements resulting from Client's instructions, lack of instructions or mistakes for which Sperry is not responsible.

Any purported variation of these Standard Sale Service Terms shall have no effect unless expressly agreed to in writing and signed by an authorized representative of Sperry. The provisions of these terms are severable and in the event any provision or sub-provision is held to be unenforceable, the remaining provisions or sub-provisions will continue in full force and effect. It is understood that Sperry is an independent contractor and not an employee or agent of Client. Should any type of dispute arise, these Standard Sale and Service Terms shall be governed by and construed in accordance with the laws of the State of Connecticut, USA, except that services provided by Sperry Rail (International) Ltd. and Pethoplan GmbH shall be governed by and construed in accordance with the laws of England and Wales, all without regard to conflict of law principles. Sperry and Client consent to the exclusive jurisdiction of the state and federal courts located in Connecticut, USA (for services provided by Sperry Rail, Inc. or Sperry Rail Canada Ltd.) or the courts of England and Wales (for services provided by Sperry Rail (International) Ltd. or Pethoplan GmbH) for the resolution of any dispute regarding or arising out of these Standard Sale and Service Terms.

### **LIMITED WARRANTY APPLICABLE TO ALL SALES OF SPERRY VEHICLES, SYSTEMS, PARTS, COMPONENTS, WALKING STICKS AND OTHER PRODUCTS**

All product sales by Sperry shall be governed by the above terms plus the Limited Warranty terms set forth below.

Provided that all Sperry operation and maintenance instructions and requirements have been strictly complied with, and subject to the conditions contained in this document, Sperry provides the following Limited Warranty to the original purchaser of its products:

- I. Boards and cables manufactured by Sperry will be free from defects in materials and workmanship for one (1) year from the date of commissioning.
- II. Disc controllers and drives, terminals, printers, and any other hardware items other than boards or cables manufactured by Sperry, whether bearing a Sperry label or not, will be free from defects in materials and workmanship for a period of one (1) year from the date of commissioning.
- III. Any media for software will be free from defects in materials for a period of one (1) year from the date of commissioning.



- IV. Any software, and any items such as batteries, tape cartridges, printer ribbons, paper products or other consumable items, are provided "as is" without warranty of any kind.
- V. Mechanical items fabricated and built by Sperry will be free from defects in material and workmanship for a period of one (1) year from the date of commissioning. Items purchased by Sperry will be covered under the manufacturer's warranty.
- VI. Wheel probes and transducers will be free from defects in materials and workmanship for a period of one (1) year from the date of commissioning.

**THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES PROVIDED BY SPERRY AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. SPERRY HEREBY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO CASE DOES THIS WARRANTY APPLY TO ISSUES CAUSED BY EQUIPMENT OR PERSONNEL NOT SUPPLIED BY SPERRY OR MODIFICATIONS NOT MADE OR APPROVED BY SPERRY. AS THE OWNER OF THE PRODUCTS IT PURCHASES FROM SPERRY, CLIENT HAS EXCLUSIVE CONTROL OVER THOSE PRODUCTS AND IS SOLELY RESPONSIBLE FOR ITS USE OR MISUSE OF THE PRODUCTS, INCLUDING ANY INSPECTION WORK PERFORMED BY OR ON BEHALF OF CLIENT USING SPERRY PRODUCTS, REGARDLESS OF WHETHER CLIENT RECEIVED ANY TRAINING FROM SPERRY PERSONNEL.**

If any product delivered with this Limited Warranty is non-conforming or defective during the applicable warranty period, then as the purchaser's sole and exclusive remedy, Sperry will, at its option, either repair or replace such non-conforming or defective product. Any software delivered with this Limited Warranty has been thoroughly tested and is thought to be functional when released. In the event that a serious functional problem is discovered in any software delivered with this Limited Warranty, Sperry may endeavor to correct such problem. Sperry shall have no obligation hereunder if any product delivered with this Limited Warranty has been misused, carelessly handled, defaced (including unauthorized repairs made or attempted by others), modified or altered. The product must be returned in its original packaging (or other adequate packaging) to the point of purchase or, by prior arrangement with Sperry, to Sperry Rail, Inc. at 46 Shelter Rock Road, Danbury, CT 06810 USA.

If Sperry determines that any product which has been returned to Sperry in accordance with the provisions of the preceding paragraph is not under warranty, it will be repaired using Sperry's standard rates for parts and labor. Sperry will use commercially reasonable efforts to repair the product after receipt thereof. Sperry shall not be responsible, however, for delays caused by shipping or non-availability of replacement components or other similar or dissimilar causes, events or conditions beyond its reasonable control.

THE FOREGOING STATES THE EXCLUSIVE REMEDY FOR ANY BREACH OF THIS LIMITED WARRANTY AND FOR ANY CLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR NEGLIGENCE, FOR LOSS OR DAMAGE CAUSED BY THE SALE OR USE OF ANY SPERRY PRODUCT. SPERRY SHALL NOT BE RESPONSIBLE FOR, AND CLIENT SHALL DEFEND AND INDEMNIFY SPERRY AGAINST AND FOR, ANY DAMAGE, LOSS, CLAIM, INJURY OR EXPENSE INCURRED OR ASSERTED BY CLIENT OR ANY THIRD PARTY, ARISING FROM OR ATTRIBUTABLE TO CLIENT'S USE OR MISUSE OF THE PRODUCTS IT PURCHASES FROM SPERRY, INCLUDING ANY INSPECTION WORK PERFORMED BY OR ON BEHALF OF CLIENT USING SPERRY PRODUCTS. ***IN NO EVENT SHALL SPERRY'S AGGREGATE LIABILITY UNDER THIS LIMITED WARRANTY TO THE PURCHASER OR ANY OTHER USER OR OTHER RELATED PARTY, FOR ANY REASON AND IN CONNECTION WITH ANY MATTER, IRRESPECTIVE OF THE NATURE OF THE CLAIM ASSERTED, EXCEED THE TOTAL AMOUNTS PAID BY PURCHASER TO SPERRY FOR THE SPECIFIC ITEM OF EQUIPMENT WHICH IS THE SUBJECT OF A BREACH OF WARRANTY CLAIM AND TO WHICH THIS LIMITED WARRANTY RELATES.***

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**THE FOREGOING TERMS APPLY TO AND SHALL GOVERN ALL SERVICES, PRODUCTS AND TRAINING PROVIDED BY ANY SPERRY BUSINESS, INCLUDING WITHOUT LIMITATION SPERRY RAIL, INC., SPERRY RAIL (INTERNATIONAL) LTD., SPERRY RAIL CANADA LTD. AND PETHOPLAN GMBH.**

**WE VERY MUCH APPRECIATE YOUR BUSINESS. SHOULD YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE PERSON FROM WHOM YOU WISH TO ORDER PRODUCTS AND/OR SERVICES OR SEND AN EMAIL TO [SERVICETERMS@SPERRYRAIL.COM](mailto:SERVICETERMS@SPERRYRAIL.COM).**