

SURPLUS TRAIN CARS AND PARTS
Auction December 11 & 13, 2012

TERMS AND CONDITIONS

1. The State of New York (the "State") reserves the right to add or withdraw any item(s) before the time of sale.
2. All property has been available for inspection and is being sold on an "as is" and "where is" basis, with no guarantee expressed or implied by the State of New York or the Auction Firm. Buyers are encouraged to inspect all items before bidding.
3. Sale will be made to the highest bidder, subject to the following terms of sale, however, if there is a dispute among two or more bidders, the OGS Representative or Auctioneer's decision will be absolute and final.
4. New York State or the OGS Representative reserves the right to reject any or all bids. On lots upon which there is a reserve, the State reserves the right of rejection to the last bid.
5. In the event of a disputed or "tie" bid, the OGS Representative or the Auctioneer, at their discretion may determine the highest bidder or may re-open the bidding to determine the highest bidder.
6. Each sale of goods is complete, with title to said goods and all risk of loss passing to the buyer when the Auctioneer says "sold," or otherwise designates bidder as purchaser; and, in the case of the train cars, when the bidder's insurance presents are accepted by the State. The State's insurance requirements for buyers of train cars are published below, Insurance Requirements For Buyers of Turboliner Train Cars. Buyers of train cars must acknowledge receipt of these requirements in order to bid on the cars. (N.B., buyers of train cars must acknowledge receipt of these requirements in order to bid on the train cars).
7. All sales are final. No refunds, No returns, No exchanges, No turndowns.
8. Full payment must be made –ON THE DAY OF THE SALE—in cash, certified funds, credit

card ONLY—within two (2) hours of the completion of the auction. A memorandum of sale will be furnished at the auction site. Municipalities, local subdivisions and school districts may use a purchase order; however, a letter of delegated authority must be presented to the OGS Representative prior to bidding and, if successful, a signed purchase order, payable to the State of New York, must then be presented.

9. Sales tax will be charged and collected on all purchases, unless the State is furnished with acceptable proof of exemption at the time of sale.
10. All bidders must be registered and have a bidding number in order for their bid to be counted as valid.
11. Bidders must be 18 years of age or older.
12. Catalog numbers are assigned for identification only. The items will not necessarily be sold in numerical order. The lotting of like items is also at the discretion of the OGS Representative and/or the Auctioneer.
13. Removal of all purchased property—including the acquisition of any and all permits or licenses which may be required—is the sole responsibility of the buyer, and such removal must be made during the State's normal business hours, i.e., 8:00 a.m. to 4:00 p.m., and within four (4) business days of the auction. A copy of the Bill of Sale must be furnished at the time of removal. Failure to comply with these removal terms will affect future bidding privileges. Items not timely removed may be forfeited and the buyer will have no recourse. Bidders purchasing six (6) or more lots or train cars who need special arrangements for removal should obtain the approval of the OGS Representative at the auction.
14. Buyer is solely responsible for any and all damages or injuries arising from removal of the property from the site of the auction.
15. In the purchase of train cars only—if Buyer needs or intends to continue storage of the property at the Scotia-Glenville Industrial Park, e.g., for removal of the property after the deadline established in these terms and conditions of sale, or for any preparation or

processing of the property at the site of the auction, then Buyer is solely responsible for any and all arrangements with the owners of the Scotia-Glenville Industrial Park and associated costs.

16. In the purchase of train cars only—Buyer is responsible for producing evidence of liability insurance, in a form and amount acceptable to the State, prior to attempting removal of the property from the site of the sale.
17. By bidding, Bidder acknowledges acceptance of these terms and conditions whether or not—bidder is present during the actual reading.
18. By bidding, Bidder represents that its funds are readily available to complete the purchase pursuant to these terms and conditions.
19. NOTICE: Buyer certifies that it shall responsibly use the subject property—including disposition of the property—in compliance with all applicable laws and rules, and environmentally preferred practices.

Insurance Requirements
For Buyers of Turboliner Train Cars
Surplus Train Public Auction -December 13, 2012

At or before the close of the auction, the Buyer shall provide to The People of the State of New York, Office of General Services (hereinafter referred to as "OGS"), Certificates of Insurance evidencing compliance with all requirements contained in this Insurance Requirements document. Such Certificates shall be of form and substance acceptable to OGS.

Acceptance and/or approval by OGS does not and shall not be construed to relieve Buyer of any obligations, responsibilities or liabilities under the Contract.

All insurance required by OGS herein shall be obtained at the sole cost and expense of the Buyer; shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to OGS; shall be primary and non-contributing to any insurance or self insurance maintained by OGS; shall be endorsed to provide written notice be given to OGS at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to (*OGS Legal Services, Corning Tower—41st Floor, Empire State Plaza, Albany NY 12242*) and shall name The People of the State of New York, its officers, agents, and employees as additional insureds there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 or its equivalent).

The Buyer shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by OGS. Such approval shall not be unreasonably withheld.

The Buyer shall require that any subcontractors they hire carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Buyer shall cause all insurance to be in full force and effect as of the date of the purchase and to remain in full force and effect throughout the term of Buyer's removal of the property

from the site of the auction (i.e., the Scotia-Glenville Industrial Park, NYS Route 5, Schenectady, NY 12306). The Buyer shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Buyer shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

The Buyer, throughout the term of its removal of the property from the site of the auction, or as otherwise required by the terms and condition of sale, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a) Commercial General Liability Insurance with a limit of not less than \$5,000,000 each occurrence. Such insurance shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

1. If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.

- b) Prior to the State's final acceptance of any bid to purchase the property subject of the special auction, i.e., train cars, Buyer(s) must submit proof that they have the workers' compensation and disability benefits coverage required by the New York State Workers' Compensation Law, or proof that they are legally exempt from obtaining such coverage. Proof of compliance must be demonstrated in accordance with the requirements set forth by the New York State Workers' Compensation Board (An instruction manual clarifying the Workers' Compensation Law requirements is available to download at the Workers' Compensation Board's website, www.wcb.state.ny.us. Once you are on the website, click on Employers/Businesses, then Business Permits/Licenses/Contracts; from there, click on Instruction Manual for Businesses Obtaining Permits/Licenses/Contracts.) The Buyer shall notify the Office of General Services, Office of Legal Services, at least thirty (30) days prior to material change or cancellation of such coverage.

If employees will be working on, near or over navigable waters, US Longshore and Harbor Workers Compensation Act endorsement must be included.

- c) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non owned automobiles.

Waiver of Subrogation. Buyer shall cause to be included in each of its policies a waiver of the insurer's right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Buyer waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

Buyer acknowledges that failure to obtain any or all required insurance on behalf of OGS, as specified herein, constitutes a material breach of terms and conditions of the auction/sale and subjects Buyer to liability for damages, indemnification and all other legal remedies available to OGS, which legal remedies include—by way of example but not limitation—the cancellation of the sale.