

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

- a. “Buyer” means the respective Buyer listed on the purchase order.
- b. “Seller” means the respective Seller listed on the purchase order.
- c. “Products” includes all materials, equipment, items, supplies or services covered by the purchase order.

2. ACCEPTANCE AND PRICE

- a. These Standard Terms and Conditions shall apply to any purchase order issued by an affiliate of Genesee & Wyoming Railroad Services, Inc. in the United States or Canada (for a list of affiliated companies, click [here](#)). Acceptance by Seller of any purchase order shall be on, and is expressly limited to, these Standard Terms and Conditions.
- b. Seller agrees that Buyer will be given the benefit of any decrease in price in the Products that may occur before the time specified for delivery or fifteen (15) days following delivery. Seller warrants that the prices contained are the same that Seller charges to its most favored customer purchasing like quantities and quality of the Projects. Buyer shall have the right to withhold monies payable by it hereunder and apply them to the payment of any obligation of Seller to Buyer or any other party arising in any manner out of the purchase order.
- c. No modification of the terms, substitution of Products, or any claimed waiver of any provision hereof shall be binding unless in writing signed by the Buyer. Buyer will not be bound by any acceptance containing terms and conditions that conflict with these Standard Terms and Conditions and Seller shall not provide or ship any Products pursuant to a purchase order under reservation.
- d. No substitution should be made in the Products furnished under Buyer’s item number(s) or in the specifications without Buyer’s prior, written approval, which can be electronic.
- e. The cost to Buyer of Products covered by the purchase order shall not include any amount, nor shall it contemplate the payment of any amount, to cover royalties on behalf of any employees of the Buyer or its subsidiary or affiliated companies.

3. TERMINATION

The purchase order may be terminated by Buyer at any time prior to shipment of Products thereunder.

4. WARRANTY

Seller warrants the Products furnished pursuant to the purchase order: 1) free and clear title, without any liens or encumbrances, 2) to be free from defects in title, labor, material or fabrication, 3) to conform to applicable specifications, drawings, samples and other descriptions given, 4) to be suitable for the purpose intended, 5) to be of merchantable quality, and further warrants that material of Seller’s design will be free from defects in design, 6) to be labeled consistent with the National Association of Purchasing Management – Rail Industry Forum’s Warranty Labeling Standards.” For full definition of standards see NAPM website

located at <http://www.napmrif.org>. Seller shall replace, at no expense to Buyer, any Products covered by this purchase order that fail to meet any of the foregoing warranties.

5. SHIPPING

All shipments of Products should be in compliance with and governed by Buyer "Routing and Shipping Instructions". For detailed instructions, please obtain a copy at www.gwrr.com/suppliers. Any failure to comply with Buyer's routing and shipping instructions, issued and valid for date of shipment, will result in Seller paying all freight charges in excess of the amount Buyer would have paid if instructions had been followed.

6. RISK OF LOSS

Risk of loss of the Products shall be borne by Seller until the Products are delivered at the F.O.B. point specified in the purchase order or, if no F.O.B. point is specified therein, until Buyer accepts the Products at its interchange point if the Products are delivered by rail, or Buyer accepts the Products at the facility or location to which they are to be delivered if the Products are delivered other than by rail; Provided, however, that IF THE PRODUCTS ARE EXPLOSIVE, FLAMMABLE, TOXIC, HAZARDOUS, OR CAUSE PROPERTY DAMAGE (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL CLAIMS) OR PERSONAL INJURY, SELLER SHALL DEFEND, INDEMNIFY, AND HOLD BUYER HARMLESS FROM AND AGAINST ALL CLAIMS ASSERTED AGAINST BUYER THAT ARISE OUT OF ANY PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY THE PRODUCTS OR BY THE TRANSPORTATION THEREOF PRIOR TO THE TIME BUYER ACCEPTS THEM.

7. INVOICING

- a. Purchase order Number, Item Number and name and address of consignee must appear on all invoices, shipping, delivery, correspondence, and other documents. Invoices should be prepared in complete detail including purchase order Number and Item Number. A separate invoice should be rendered for each order. When order is complete in one shipment one invoice must be rendered, but when partial shipments are made, then separate invoices must be rendered for each shipment or delivery as made on the order.
- b. It shall be understood that the invoice payment terms and/or cash discount period will date from the receipt of a properly prepared invoice by our Accounts Payable Department, not from the date of the invoice.
- c. If invoice shows no payment terms, terms on the purchase order will be used. If invoice shows no payment terms and there are no terms on the purchase order, terms of net 30 days will be used.
- d. Invoice submittals should be done electronically to Accounts Payable. Contact information is provided at www.gwrr.com/suppliers.
- e. Inquiry concerning payment status should be directed to Accounts Payable. Contact information is provided at www.gwrr.com/suppliers.

8. INSPECTION

- a. All Products will be subject to Buyer's inspection and approval at destination unless otherwise agreed. Products not in accordance with specifications will be rejected and held subject to shippers orders. Shipper must pay all expenses, including freight both ways, on rejected Products.
- b. If the Products shipped or to be shipped or rendered or to be rendered hereunder are rejected, in whole or part by Buyer by reason of Seller's failure to comply with any of the terms, conditions and/or specifications contained herein, Buyer, after so notifying Seller in writing may: (i) return the rejected portion of such Products and/or the rejected portion of such services to Seller at Seller's expense or hold the same for such disposal as Seller shall indicate, without invalidating the remainder of this purchase order; (ii) may reject the entire shipment of Products and cancel this purchase order for any undelivered Products; or (iii) to cause Seller to pay Buyer promptly for expenses incurred in remedying the defective or nonconforming Products (including, without limitation, the purchase of substitute (or functionally equivalent) products), or to cause Seller, at Seller's expense, to expeditiously replace, upgrade or repair any defective or rejected Products. If the option set forth in (i) is exercised, Buyer may, in its discretion, reduce the Product quantity specified in the purchase order by the number of Products returned.

9. PACKAGING

- a. Each package of Products shipped must conform to the National Association of Purchasing Management – Rail Industry Forum's Packaging Standards. For detail listing of Standard see NAPM website located at <http://www.napmrif.org>.
- b. Each package of Products shipped must contain a packing list showing Seller's name, contents of package, and the purchase order Number of the face hereof.

10. SAFETY

- a. Seller represents that the Products covered by this purchase order have been manufactured and marked in accordance with all applicable laws, rules, and regulations, and shall conform in all respects to the requirements of applicable insurance and governmental health and safety regulations.
- b. Products furnished or delivered under this purchase order shall conform to the standards or requirements, if any, established under the Occupational Safety and Health Act of 1970 and any regulations issued thereunder, including any amendments thereto effective on the date of this purchase order.
- c. Pursuant to Occupational Health and Safety Administration regulations regarding hazard communication (29 CFR Part 1910.1200) each container of hazardous chemical(s) as defined by the regulations must be labeled with: 1) Identify of hazardous chemical(s) in product; 2) Appropriate hazard warnings, including health effects; and 3) Name and address of chemical manufacturer, importer or other responsible party.

SAFETY – CANADA

- a. Seller represents that the Products covered by this purchase order have been manufactured and marked in accordance with all applicable laws, rules, and

regulations, and shall conform in all respects to the requirements of applicable insurance and governmental health and safety regulations.

- b. Products furnished or delivered under this purchase order shall be furnished or delivered in such manner as to comply with the standards and requirements, if any, prescribed by the Transportation of Dangerous Goods Act, S.C. 1992, c. 34, the Transportation of Dangerous Goods Regulations (SOR 85/-77) and any further regulations issued thereunder, as amended, effective on the date of this purchase order.
- c. The shipping document prescribed to accompany any dangerous goods being furnished or delivered shall contain the information prescribed by s. 4.81 of the Transportation of Dangerous Goods Regulations.

11. PATENTS AND REPAIR RIGHTS

- a. The Seller represents that Products covered by this purchase order have been manufactured and marked in accordance with applicable laws, rules and regulations.
- b. The Seller, for the Seller and successors and assigns of the Seller, agrees to indemnify and hold harmless the Buyer and its subsidiary and affiliated companies and its and their successors, lessees and assigns from and against any and all damages, claims, suits, judgment, costs and expenses whatsoever by reason of infringement or alleged infringement on patents and against claims for patent royalties involved in consequence of the purchase or use of Products covered by this order and any appurtenances furnished by the Seller in connection therewith.
- c. Buyer (and, as to rolling stock or equipment subject to customary interchange, other railroads) shall have the unconditional right to repair patented devices, and repair parts may be made by or for Buyer or purchased in the open market as Buyer may determine. The protection accorded Buyer under paragraph 11(b) hereof shall apply to any such repairs and repair parts contemplated by this paragraph 11(c).

12. INDEMNITY

- a. Seller shall defend, indemnify Buyer and any party who sells or uses any of Buyer's products or services that utilize the Products or services purchased under the purchase order, and hold each of them harmless against all losses, liabilities, damages, costs, and expenses, including without limitation, attorneys' fees, arising from:
 - i. Claims of injury or death to person or damage to property (including, without limitation, environmental claims) suffered or claimed to have been suffered by any entity or person caused by, or alleged to have been caused by, defective Products or by any act or omission, negligent or otherwise, of Seller or any of its subcontractors or any of their employees, workmen, servants, or agents;
 - ii. Labor or material liens arising out of or on account of the Products or their use or of any work performed by Seller or any of its subcontractors;

- iii. Claims by any third party for any fee or compensation for services performed or allegedly performed for or on behalf of Seller in connection with the purchase order; and
 - iv. Fines and civil or criminal penalties arising out of the manufacture or delivery or performance by Seller of the Products or services hereunder.
- b. Should it become necessary for Seller or its employees or agents to enter upon the premises or property of Buyer in order to construct, erect, inspect, deliver, repair or provide other services as required by this purchase order, the Seller shall be responsible for and shall reimburse Buyer for any damage to Buyer's property, or to the property of others, and shall indemnify, save harmless and assume the cost of defense of Buyer from and against any loss, damage, expense, injury of liability for death, of or injury to or damage to the property of any person or from liens, fines or penalties of any character, or taxes or assessments of any kind, resulting in any manner from any act or omission of Seller or its agents or employees, on or about Buyer's premises or property, or in connection with any activities of Seller pursuant to this purchase order.
 - c. Promptly on Buyer 's request, Seller shall accept the defense of any claim for which Buyer is indemnified hereunder (subject to Buyer 's concurrence in Seller's choice of counsel), pay all such losses, liabilities, damages, costs and expenses, including, without limitation, reasonable attorneys' fees for any claim, demand, suit, action, proceeding, litigation or settlement relating thereto.
 - d. Buyer's or any other third party's negligence or misconduct shall not mitigate or otherwise invalidate Seller's liability under this section.
 - e. The indemnity under this section shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability or other tort.
 - f. The indemnity under this section shall survive delivery and acceptance of the Products.

13. EQUAL EMPLOYMENT OPPORTUNITY; NON DISCRIMINATION

Seller agrees to comply with all federal, state, county, municipal or other governmental laws, orders, or regulations (U. S., Canadian or foreign) and all industry standards in connection with this purchase order, but not limited to: the provisions of the Occupational Safety and Health Act of 1970 (including the provision of Material Safety Data Sheets); Fair Labor Standards Act; Social Security and Worker's Compensation Laws; Equal Opportunity Clause prescribed in 41 CFR 60-1.4; Affirmative Action Clause prescribed in 41 CFR 60-250.4 regarding disabled veterans and veterans of the Vietnam Era; Affirmative Action Clause for Handicapped Workers prescribed in 41 CFR 60-741.4; 48 CFR Chapter 1 Subpart 19.7 regarding Small Business and Small Disadvantaged Business Concerns; Affirmative Action Compliance Program (41 CFR 60.17); and 41 CFR 60-1.8 prohibiting segregated facilities. Seller agrees to defend, indemnify and save Buyer harmless if Seller fails to comply with the foregoing, and in the event of such failure Buyer may, in addition to any other rights it may have hereunder, at law or in equity, terminate this Agreement.

14. RECIPROCITY

Seller has not employed or retained any company or person to solicit or secure this order and that it has not agreed to pay any company or person, any fee, commission percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this order. Seller has not extended any loan, gratuity or gift of money in any form whatsoever to any employee, agent or officer of Buyer. Nor will Seller rent or purchase any equipment or materials from any employee, agent or officer of Buyer.

15. SELLER RECORD KEEPING

The Seller shall keep an accurate record of all labor, material and other pertinent data relating to the purchase order and the authorized representatives of Buyer shall, at all reasonable times, for audit purposes, have free and full access to the accounts, books and records of the Seller's sales hereunder. The Seller shall preserve such records for a three (3) year period from the date of sale.

16. SALES AND USE TAX AUTHORIZATION - CANADA

Goods and Services Tax payable on the materials, equipment or supplies furnished or delivered under this purchase order shall be assessed, collected and remitted by the Seller in accordance with the Excise Tax Act, R.S.C. 1985, c. E-15, as amended. All other tax payable on the materials, equipment or supplies furnished or delivered under this purchase order shall be assessed, collected and remitted by the Seller in accordance with the applicable provincial and municipal laws in the jurisdiction where this purchase order is completed. Any privilege, license or gross receipts tax for the account of Seller will not be charged to Buyer.

17. ASSIGNMENT AND SUBCONTRACTING

Seller shall not delegate any duty under or assign the purchase order in whole or in part, make any subcontract for furnishing the Products, or assign any claim arising or sum payable with respect thereto without the prior written consent of Buyer. Any attempted delegation, subcontract or assignment shall be void.

18. GENERAL PROVISIONS

- a. Usage of trade, course of performance, and course of dealing shall not supplement or modify the written terms of purchase order.
- b. Buyer's failure to insist on strict performance of any term or condition of the purchase order, and/or these Standard Terms and Conditions, failure or delay to exercise any right or remedy provided therein or herein or by law or to properly notify Seller in the event of breach, acceptance of or payment for Products under the Agreement, the purchase order, and/or these Standard Terms and Conditions or approval of any design, shall not release Seller from any of its warranties or obligations and shall not be deemed a waiver of any right of Buyer to insist upon strict performance of such warranties or obligations or of any of its rights or remedies as to any prior or subsequent default, nor shall any purported oral modification or rescission by Buyer operate as a waiver of any term or condition hereof.

- c. Nothing in the purchase order, and/or any acceptance hereof shall constitute Seller or any of its officers, directors, or employee's being appointed Buyer's agent, legal representative or employee.
- d. The purchase order, and these Standard Terms and Conditions shall be construed and governed by the laws of the State of Florida, without regard to its conflict of laws principles and any lawsuit arising out of or in connection with the purchase order, and/or these Standard Terms and Conditions shall be filed solely in a court of competent jurisdiction in the State of Florida.
- e. These Standard Terms and Conditions shall inure to the benefit of and be binding upon the principals, agents, personal representatives, successors and permitted assigns of the Seller and the agents, successors and assigns of Buyer.

19. ELECTRONIC SIGNATURES

Seller and Buyer agree to use digital signatures for the execution of the purchase order. The parties acknowledge and agree that such digital signatures shall have the same legal effect as a written signature. Seller shall be solely responsible for ensuring that an authorized representative of Seller signs the applicable purchase order utilizing a digital signature. Seller agrees not to contest the validity or enforceability of any signature on such purchase order.

20. MINIMUM SAFETY REQUIREMENTS

Buyer is committed to providing the safest workplace possible for, not only Buyer's own employees, but also the Seller's employees. Adherence to the minimum safety requirements listed below, plus additional instructions at the job site, will help to ensure an injury-free project. The railroad employee in charge is authorized to take any actions necessary to prevent injuries to any person, damage to railroad property, disruption of railroad operation, and the safety of the public.

- i. It is Seller's responsibility to make sure that all shipments are handled, loaded and unloaded with safety as the first priority. Each shipment or loading or unloading assignment starts with knowledge of the task and a job briefing that includes all personnel involved.
- ii. Buyer has a stringent policy on the wearing of personal protective equipment and other behavior that Buyer extends to contractors, truck drivers, service and delivery personnel, customers, visitors and employees while they are on company property. All personnel and contractors must wear protective eyewear, hard hats, steel-toed safety shoes, long pants, and shirts with sleeves. Finger rings, necklaces, bracelets or other jewelry that could become entangled in equipment, machinery or material should be removed prior to entering Buyer's property. Hearing protection must be used in areas marked "Hearing Protection Required." Access to Buyer's buildings, offices, platforms and ramps should be limited to main aisles and safe areas. Work areas should be avoided if possible.
- iii. When on Buyer's property, drivers must operate their vehicles within the posted speed limit and obey all traffic indicators including yield and stop signs. Drivers must not operate over a railroad grade crossing unless it is safe to do so, and they must be alert for movement of trains, locomotives,

cars or other railroad equipment at all times, in all directions, on all tracks. Grade crossings in yards may not be protected, and it is the driver's responsibility to cross any tracks safely. Drivers must not cross tracks ahead of moving railroad equipment. Drivers should not perform any duties within 15 feet of Buyer's operating track without first contacting Buyer for permission to do so; Buyer will then advise the operator under what conditions and precautions operator may perform his/her duties near said track.

- iv. All materials must be handled and shipped in compliance with all government regulations and company policy. Hazardous materials must be properly placarded and noted on the bill of lading.