

**GENESEE & WYOMING RAILROAD SERVICES, INC.**  
**GENERAL TERMS AND CONDITIONS**

Seller is required to review and understand the Genesee & Wyoming Railroad Services, Inc. General Terms and Conditions set forth herein (these “General Terms”) and such other Purchaser-approved purchase order, invoice, or applicable Electronic Data Interchange (EDI) transmission (each and collectively, the “Purchase Order”). In accepting the Purchase Order, Purchaser and Seller acknowledge and agree they are entering into a binding agreement consisting of the Purchase Order together with these General Terms (together, this “Agreement”).

For the purposes of these General Terms, “Purchaser” shall mean only Genesee & Wyoming Railroad Services, Inc. or the entity listed as the purchaser on the Purchase Order, which shall be an affiliate of Genesee & Wyoming Railroad Services, Inc. and also a U.S. or Canadian subsidiary of Genesee & Wyoming Inc., and “Seller” shall mean the supplier, vendor, service provider, or other contractor listed on the Purchase Order.

**Acceptance**

If the Purchase Order is an offer, Seller’s acceptance of the Purchaser Order shall be expressly limited to the terms and conditions of this Agreement and Purchaser hereby objects to any different or additional terms and conditions contained in any response to the Purchase Order. If Seller has made a prior offer, then Seller’s offer is rejected and the Purchase Order is a counteroffer and Seller’s acceptance is expressly limited to the terms and conditions of this Agreement and Purchaser hereby objects to any different or additional terms and conditions contained in any response to the Purchase Order. Seller’s shipment of any Goods or rendering or causing the rendering of any Services shall constitute acceptance of and assent to the terms and conditions of this Agreement. Seller shall not ship any Goods covered hereby or provide any Services covered hereby under reservation and no purported reservation shall be valid. None of Seller’s terms and conditions of sale or service contained in any quotation, acknowledgment, invoice or acceptance of the Purchase Order shall apply. No modification or release shall be binding unless mutually agreed to in writing. Further, in the event these General Terms conflict with the terms and conditions of the Purchase Order, the terms and conditions of the Purchase Order shall govern. Notwithstanding the foregoing, in the event the terms and conditions of this Agreement conflict with the terms and conditions of any other applicable contract between Purchaser and Seller, the terms and conditions of such other contract shall govern.

**Goods and Services**

Seller agrees to provide the goods (the “Goods”) and/or services (the “Services”) described in the Purchase Order, in accordance with the quantities and specifications as set forth therein.

**Prices**

The Goods and/or Services provided under this Agreement must be filled at a price or prices no higher than those indicated on the front of the Purchase Order. In the absence of such indication of price by Purchaser, Seller must fill the Purchase Order at a price no higher than the price last quoted or charged to Purchaser. Seller-declared price decreases for the same or similar goods or services may incur a credit memo for the price of the Goods and/or Services purchased hereunder by a comparable amount or percentage. Purchaser shall have the right to withhold monies payable via credit memo hereunder and apply them to the payment of any obligation of Seller to Purchaser or any other party arising in any manner out of the Purchase Order.

## **Taxes**

Purchaser shall be responsible for paying applicable sales taxes of a state or political subdivision of a state of the United States or a province or political subdivision of a province of Canada (“Sales Taxes”) that Seller separately states on the invoice or billing document provided to Purchaser; provided, however, that (a) nothing herein shall preclude Purchaser from claiming whatever Sales Tax exemptions are applicable to amounts Seller bills to Purchaser, (b) Seller shall be responsible for all sales, use, excise, value-added, consumption, services and other taxes, which may accrue on all services, materials, equipment, supplies or fixtures that Seller uses or consumes in the performance of this Purchase Order and (c) Seller shall be responsible for Sales Taxes, together with any penalties, fines or interest thereon, if (i) Seller fails to separately state such Sales Taxes on the invoice or other billing documents provided to Purchaser or (ii) Seller fails to collect such Sales Taxes from Purchaser at the time Purchaser remits payment to Seller, except where Purchaser claims a Sales Tax exemption, or (iii) Seller fails to issue separate invoices for each state where the Goods are delivered and/or Services covered by this Purchase Order are performed. If a written claim is made against Seller for Sales Taxes with respect to which Purchaser may be liable hereunder, Seller shall promptly notify Purchaser of such claim and provide Purchaser copies of all correspondence received from the taxing authority. Purchaser shall have the right to contest, protest, or claim a refund of, in Purchaser’s own name, any Sales Taxes paid by Purchaser to Seller or for which Purchaser otherwise is responsible under this Purchase Order; provided, however, that if Purchaser is not permitted by law to contest any such Sales Taxes in its own name, Seller shall, if requested by Purchaser at Purchaser’s sole cost and expense, contest in its own name, the validity, applicability or amount of such Sales Tax and allow Purchaser to control and conduct such contest.

## **Billing and Payment Terms**

The Purchase Order number, item number and name and address of consignee must appear on all invoices, shipping, delivery, correspondence and other relevant documents. A separate invoice should be rendered for each Purchase Order. When a Purchase Order is completed in one shipment, a single invoice must be rendered, but when partial shipments are made, separate invoices must be rendered for each shipment or delivery as and when made on the Purchase Order. The invoice payment terms and/or cash discount period will commence upon receipt of a properly prepared invoice by Purchaser and not on the date of the invoice. If the invoice contains no payment terms, payment terms on the Purchase Order will be used. If the invoice contains no payment terms and there are no payment terms on the Purchase Order, the invoice shall be paid net 30 days. Instructions for submitting invoices can be found at [www.gwrr.com/suppliers](http://www.gwrr.com/suppliers).

## **Packing**

With respect to the purchase of Goods, no charge will be added for packing, boxing or cartage unless otherwise stipulated herein. Each package of Goods shipped must conform to the Institute for Supply Management – Rail Industry Forum’s Packaging Specifications Manual, which can be found at [railcis.org/packaging-standards/packaging-specifications-manual](http://railcis.org/packaging-standards/packaging-specifications-manual). Each package of Goods shipped must contain a packing list showing Seller’s name, contents of package and the Purchase Order number. Purchaser’s weight and/or count shall be accepted as final and conclusive on all shipments not accompanied by such packing list.

## **Routing**

Unless otherwise stated on the front of the Purchase Order, routing instructions can be obtained by going to [www.gwrr.com/suppliers](http://www.gwrr.com/suppliers).

## **Overload/Load Limit**

Seller shall not overload railcars or containers, or load a railcar or container beyond its load-dimension

limits. The acceptance by Purchaser or any of its affiliates, or other transportation provider of a railcar, container, bill of lading or other document shall not be a waiver of these prohibitions.

**Title and risk of loss**

Risk of loss of Goods purchased hereunder shall be borne by Seller until the Goods are delivered at the F.O.B. point specified in the Purchase Order or, if no F.O.B. point is specified herein, until such Goods are accepted by Purchaser. **NOTWITHSTANDING THE FOREGOING, IF THE GOODS PURCHASED HEREUNDER ARE EXPLOSIVE, FLAMMABLE, TOXIC OR OTHERWISE HAZARDOUS, SELLER SHALL INDEMNIFY, DEFEND AND HOLD PURCHASER AND ITS AFFILIATES HARMLESS AGAINST ALL CLAIMS ASSERTED AGAINST PURCHASER OR ANY OF ITS AFFILIATES THAT ARISE OUT OF ANY PERSONAL OR PROPERTY DAMAGE CAUSED BY SUCH GOODS OR BY THE TRANSPORTATION THEREOF PRIOR TO THE TIME SUCH GOODS ARE ACCEPTED BY PURCHASER.** Notwithstanding any restrictive legends to the contrary, title to plans, drawings and specifications with respect to the Goods shall be vested in Purchaser and may be used by Purchaser for any purpose.

**Inspection**

Purchaser or its duly authorized representative has the right to test and inspect all Goods ordered hereunder and the workmanship and other results of Services ordered hereunder before accepting or making payment for such Goods or Services.

**Non-Disclosure**

If Purchaser discloses or grants access to Seller to any research, development, technical, economic or other business information of a confidential or proprietary nature, whether reduced to writing or not, Seller agrees not to disclose such information to any person at any time without Purchaser's prior written consent.

**Warranties**

Seller expressly warrants that: (1) all Goods will conform to plans, drawings, specifications or samples furnished by Purchaser or furnished by Seller and approved and accepted by Purchaser, it being understood that such plans, etc., are incorporated by reference and made a part hereof; (2) all Goods will be of merchantable quality, fit and sufficient for the purpose ordered and will be free from defects, latent or patent, in material and workmanship; (3) all Services will be performed in a workmanlike, efficient and safe manner and will conform to standards generally accepted in the trade or industry involved; and (4) it has clear title to the Goods, and the Goods are and will be free from any security interest, lien or encumbrance. **THESE WARRANTIES ARE IN ADDITION TO ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS SET FORTH HEREIN AND IN THE UNIFORM COMMERCIAL CODE OF FLORIDA (THE "UCC") AND ANY OTHER FLORIDA LAW, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO SUCH GOODS AND SERVICES AND SHALL SUPERCEDE ANY DISCLAIMER OR NOTICE THAT ATTEMPTS TO LIMIT SUCH WARRANTIES.**

**Work on Purchaser's Premises**

If work in connection with the Goods or Services purchased hereunder is to be performed on Purchaser's premises by Seller, the following terms and conditions shall apply:

- **IN ACCEPTING THE PURCHASE ORDER, SELLER AGREES THAT: (1) IT WILL INDEMNIFY AND HOLD HARMLESS PURCHASER FROM ANY AND ALL CLAIMS, LIABILITIES, OBLIGATIONS AND CAUSES OF ACTION ARISING FROM SUCH PERFORMANCE OR SALE; AND (2) SHALL DEFEND ANY SUIT BROUGHT**

**AGAINST PURCHASER AND SHALL PAY ALL DAMAGES, COSTS AND EXPENSES IN CONNECTION WITH SUCH ACTION FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO OR DESTRUCTION OF ANY PROPERTY HOWSOEVER CAUSED, INCLUDING DAMAGE RESULTING FROM THE PERFORMANCE OR LACK OF PERFORMANCE OF SELLER IN CONNECTION WITH THE GOODS OR SERVICES PURCHASED HEREUNDER.**

- Seller agrees to furnish evidence of adequate insurance coverage of commercial liability, automobile liability, property damage liability and workers' compensation acceptable to Purchaser. Seller shall name Purchaser (and its affiliates, as necessary) as additional insured and shall waive subrogation.
- Seller agrees that all persons it compensates shall be deemed to be its employees for all purposes, including any tax or contribution levied by federal, state and/or local governments.
- Seller agrees to comply with all rules and regulations established by Purchaser.

### **Patents; Trademarks; Copyrights**

Seller warrants that: (1) the Goods and/or Services purchased hereunder, as well as the production, sale and use thereof, do not and will not infringe any third party patents, trademarks, trade secrets or copyrights; (2) Seller will at its own expense defend any suit that may arise in respect thereto; and (3) **SELLER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS PURCHASER, ITS PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE CUSTOMERS FROM ALL LOSS, DAMAGE, COST AND EXPENSE, INCLUDING ATTORNEYS' FEES, WHICH MAY RESULT FROM THE ASSERTION OF ANY INFRINGEMENT BY ANY PERSON.** If any Goods and/or Services are or are likely to be the subject of a claim of infringement, Seller shall procure, at no additional cost to Purchaser, the right to continue to use the Goods and/or Services.

### **Applicable laws**

The laws of the state of Florida shall govern this Agreement for the purchase of Goods and/or Services in the United States. The parties to this Agreement specifically intend that the provisions of Article 2 of the UCC of Florida will control as to all aspects of this Agreement, except where inconsistent with the terms of this Agreement. Seller agrees to comply with all federal, state, county, municipal or other governmental laws, orders, or regulations (U. S. or foreign) and all industry standards in connection with this Agreement, including, but not limited to, as applicable: the provisions of the Occupational Safety and Health Act of 1970; Fair Labor Standards Act; Social Security and Worker's Compensation Laws; the Transportation of Dangerous Goods Act, S.C. 1992 and the regulations promulgated thereunder; and Executive Order 11246, 41 CFR Section 60, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, and Section 503 of the Rehabilitation Act of 1973, all as amended, regarding equal opportunity in employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. In particular:

- (a) This Seller and any subcontractors shall abide by the requirements of 41 CFR 60 - 1.4(a); 60 - 300.5(a); and 60 - 741.5 (a). These regulations prohibit discrimination against qualified individuals on the basis of their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in

employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

(b) The Seller and any subcontractors shall abide by the requirements of Buy America statutes, including but not limited to 23 USC §313, 49 USC §24405(a), 49 CFR § 635.410, 49 CFR § 661, 2 C.F.R. § 176, 49 USC §5323(j) and Section 1605 of the American Recovery and Reinvestment Act of 2009. These statutes regulate the origin of steel, iron and manufactured products used on federally funded projects, generally requiring them to be made in the United States. Any materials you provide for a federally funded project constructed by Purchaser must comply with these laws and regulations.

(c) The Seller hereby agrees that it will incorporate, or cause to be incorporated, this equal employment opportunity/non-discrimination clause into any non-exempt contract or subcontract for construction work related to this Agreement.

**SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD PURCHASER HARMLESS IF SELLER FAILS TO COMPLY WITH THE FOREGOING**, and in the event of such failure Purchaser may, in addition to any other rights it may have hereunder, at law or in equity, terminate this Agreement.

For the purchase of Goods and/or Services in Canada, the laws of the province of Quebec shall govern this Agreement and each of Purchaser and Seller submit to the exclusive jurisdiction of the courts of the province of Quebec.

#### **Indemnification**

**The following shall apply except to the extent otherwise expressly provided in these General Terms:**

**SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS PURCHASER, ITS OFFICERS, AGENTS, EMPLOYEES, PARENTS, SUBSIDIARIES, SUCCESSORS AND ASSIGNS AGAINST ANY LOSS, COST, DAMAGE OR EXPENSE, INCLUDING ATTORNEYS' FEES, ARISING OUT OF ANY CLAIM OR CHARGE FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ASSERTED AGAINST PURCHASER ATTRIBUTABLE TO THE MANUFACTURE, SALE OR DELIVERY OF THE GOODS OR PERFORMANCE OF THE SERVICES. THIS INDEMNITY 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. THIS INDEMNITY SHALL SURVIVE DELIVERY AND ACCEPTANCE OF THE GOODS OR SERVICES. THE LIABILITY ASSUMED BY SELLER SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DESTRUCTION, DEATH OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF PURCHASER OR ANY OF ITS AFFILIATES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF PURCHASER OR SUCH AFFILIATE. THE INDEMNIFICATION OBLIGATION ASSUMED BY SELLER SHALL INCLUDE ANY PROCEEDINGS (OR LIABILITIES RELATED THERETO) BROUGHT AGAINST PURCHASER OR ANY SUCH AFFILIATE UNDER (I) THE FEDERAL EMPLOYER'S LIABILITY ACT, (II) STATE-BASED WORKERS' COMPENSATION LAWS AND REGULATIONS, (III) THE SAFETY APPLIANCE ACT, (IV) THE LOCOMOTIVE INSPECTION ACT, (V) THE OCCUPATIONAL HEALTH AND SAFETY ACT, (VI) THE RESOURCE CONSERVATION AND RECOVERY ACT, AND (VII) ANY SIMILAR STATE OR FEDERAL STATUTE, WHENEVER SO CLAIMED,**

**INCLUDING, WITHOUT LIMITATION, CLAIMS FOR STRICT LIABILITY UNDER THESE OR ANY OTHER LAWS IMPOSING STRICT LIABILITY.**

**Remedies**

If any of the Goods or Services are found within a reasonable time after delivery to Purchaser to be defective in material or workmanship or otherwise not in conformity with the requirements of this Agreement, Purchaser, in addition to any other rights which it may have hereunder, at law or in equity, may, at its option (a) reject and return such Goods at Seller's expense, in which event Seller shall either issue a full refund to Purchaser for all monies paid to Seller or replace such Goods, depending upon the written instructions issued by Purchaser, or (b) upon notice to Seller, take such actions as may be required to cure all defects and/or bring the Goods into conformity with all the requirements of this Agreement, or procure replacement goods from an alternate supplier, and in any of the foregoing circumstances. Any and all damages, costs and expenses incurred by Purchaser in the exercise of its rights under this clause shall be promptly reimbursed by Seller. The remedies set forth in these General Terms are in addition to any other remedy provided at law, in equity, in the UCC, under any other Florida law or any written agreement between Purchaser and Seller. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL PURCHASER OR ITS AFFILIATES BE LIABLE FOR ANY AMOUNT EXCEEDING THE AGGREGATE PURCHASE PRICE SPECIFIED IN THE PURCHASE ORDER AND IN NO EVENT SHALL PURCHASER OR ANY OF ITS AFFILIATES BE LIABLE, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS INTERRUPTION EVENTS, ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THE PURCHASE ORDER.**

**Waiver**

Waiver by the Purchaser of a breach of any of these General Terms or of any contract resulting from this purchase shall not be construed as a waiver of any other breach.

**Termination**

Purchaser may terminate this Agreement without penalty or payment of termination charges, if Seller (1) fails to make delivery as specified, or within a reasonable time if no time is specified, or (2) fails to comply with any other provision of this Agreement. Purchaser also may cancel any unfilled portion of this Agreement at any time without cause upon giving Seller written notice. On such notice, Seller shall immediately discontinue the manufacture or delivery of the Goods or the performance of the Services, thereafter doing only such as may be necessary to preserve and protect work already in progress, or as otherwise specified by Purchaser in such notice. Thereafter, Seller shall be entitled to compensation for its reasonable costs properly allocable to the cancellation, but not for any profits for the portion of the Goods not provided and/or the Services not performed.

**Force Majeure**

Fires, floods, strikes, acts of terrorism, war, acts of God, lockouts, epidemics, pandemics, accidents, shortages of transportation, any governmental warnings that either party might reasonably rely upon that would curtail their operations, or any other causes beyond the reasonable control of the parties that prevent a party from performing its obligations hereunder, shall operate to suspend such obligations during the period required to remove such cause or causes, subject, however, to Purchaser's right of termination as stated above.

### **Insolvency**

In the event Seller shall file a voluntary petition in bankruptcy, or a petition in bankruptcy shall be filed against Seller, or Seller shall make an assignment for the benefit of its creditors, or Seller shall apply for relief in any form as a debtor under any statute of the United States or law or regulation of any other governmental authority or any other proceeding under any statute of the United States or law or regulation of any other governmental authority seeking the relief or readjustment of Seller's indebtedness shall be commenced, then Purchaser shall have the right to terminate this Agreement or so much thereof as has not been completed.

### **Non-Assignment**

Assignment by Seller of this Agreement or any interest herein or any payment due or to become due hereunder, without the prior written consent of Purchaser, shall be void.

### **Trademark**

Seller shall not use the name or logo of Purchaser or any of its affiliates in advertising without the prior written consent of Purchaser or such affiliate.

### **Hazardous Materials**

Materials deemed hazardous will be packaged, marked and shipped by Seller in compliance with all federal, state and local regulations then in effect and will further comply with any special requirements as might be noted on the face of the Purchase Order.

### **U.S. Environmental Protection Agency Toxic Substance Control Act**

Seller represents and warrants that no chemical on the list of prohibited chemical substances compiled and published by the Administrator of the U.S. Environmental Protection Agency pursuant to the Toxic Substances Control Act is contained in or constitutes the Goods or packaging sold or transferred to the Purchaser, and Seller further warrants that the Goods and packaging are otherwise in compliance with said Act.

### **Code of Ethics Compliance**

Seller agrees to comply with the Genesee & Wyoming Inc. Code of Ethics and Conduct and all publicly available policies referenced therein (collectively, the "Policies"), which can be located at [gwrr.com/about\\_us/code-of-ethics](http://gwrr.com/about_us/code-of-ethics). Seller further agrees to require its employees and subcontractors who enter onto the property of Purchaser to comply with these Policies.

### **Anti-Corruption Compliance**

Purchaser, in compliance with the United States Foreign Corrupt Practices Act and any other applicable anti-corruption laws and regulations (collectively, "Anti-Corruption Laws"), requires that Seller also ensure such compliance in the context of the contractual relationship contemplated by this Agreement. Seller represents, warrants, covenants and agrees that it, directly or indirectly, including through a third party, has not taken, and will not take, any action, directly or indirectly, in connection with any business transaction with or for the benefit of Purchaser, that violated or would violate any applicable Anti-Corruption Law.

### **Sanctions Compliance**

Seller represents, warrants, covenants and agrees that it is not (a) a person whose name appears on the list of Specially Designated Nationals and Blocked Persons (an "OFAC Listed Person") published by the Office of Foreign Assets Control, United States Department of the Treasury ("OFAC"), (b) an agent, department or instrumentality of, or otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, (i) any OFAC Listed Person or (ii) any person, entity, organization, foreign country

or regime that is subject to any OFAC sanctions program, or (c) otherwise blocked, subject to sanctions under or engaged in any activity in violation of the economic or other sanctions of the United States or any other applicable jurisdiction.

**Language Laws (Quebec)**

The parties have requested and agreed that this Agreement be drafted in the English language. *Les parties aux présentes ont demandé que le présent Contrat soit rédigé dans la langue anglaise.*

**Arbitration**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, for the purchase of Goods and/or Services in the United States shall be settled through final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Exclusive venue for such arbitration shall be Jacksonville, Florida.