

A&K RAILROAD MATERIALS, INC.
SALES ORDER TERMS AND CONDITIONS FOR NEW MATERIALS
EFFECTIVE AS OF APRIL 25, 2018

1. DEFINITIONS; ENTIRE AGREEMENT. These Terms and Conditions apply to all sales of new materials ("Materials") by A&K Railroad Materials, Inc. ("Seller") to the entity identified on the sales order as the entity to which Seller is providing Materials and/or services ("Buyer"). These Terms and Conditions (together with the applicable sales order(s), the "Agreement") constitutes the entire agreement relating to the subject matter hereof and supersedes all prior or contemporaneous understandings or statements. Any terms submitted by either party which are in addition to or inconsistent with the Agreement (including, without limitation, any terms in a purchase order, order acknowledgment, quotation, invoice, bill of lading or other instrument) are not binding and are expressly rejected, unless agreed to in writing and signed by both parties.

2. ACCEPTANCE; CONFLICT. Buyer will be deemed to accept the Agreement upon the first of the following to occur: (a) Buyer signing the sales order(s) to which these Terms and Conditions apply; (b) Buyer accepting delivery of the Materials, or in the case of any services, Seller's commencement of performance, without written notice to Seller that Buyer does not accept; or (c) the passage of 5 days after Buyer's receipt of these Terms and Conditions without written notice to Seller that Buyer does not accept. If there is a conflict between these Terms and Conditions and a provision elsewhere in the Agreement or any other document, these Terms and Conditions will prevail.

3. PRICES; PAYMENT. The purchase price of the Materials/services will be as stated in the relevant sales order(s). All prices are exclusive of, and Buyer shall pay, any taxes which are payable on the sale of the Materials/services other than federal or state income taxes of Seller, unless Buyer first provides to Seller a valid tax exempt certificate. All sales orders are subject to credit approval by Seller. Unless specified otherwise in the relevant sales order(s), Buyer shall pay all amounts due within 30 days from the date of the relevant invoice, provided that Seller may require pre-payment of all or part of the purchase price. All past due amounts shall bear interest at the lower of 1½% monthly (18% annually) or the maximum amount allowed by applicable law. If Buyer fails to make payments or otherwise breaches the Agreement, Seller, may, at its option, by written notice to Buyer, terminate the Agreement or defer shipments or performance.

4. Title; Security Interest. Title to the Materials will pass to Buyer when payment of the purchase price is made in full. Until such time, the Materials will remain personal property (regardless of attachment to realty), and Seller will have a security interest and the right, at its discretion, to file a UCC-1 Financing Statement or equivalent to perfect its security interest.

5. SHIPPING. Shipping terms and risk of loss and damage to the Materials will be in accordance with either: (a) if the relevant sales order designates Seller's "shipping point" as the delivery location, Incoterms 2010® FCA (Seller's shipping point), in which case the prices are exclusive of, and Buyer shall pay, all shipping costs to the final destination; or (b) if the relevant sales order designates Buyer's final "destination" as the delivery location, Incoterms 2010® DAP (Buyer's final destination), in which case the prices are inclusive of all shipping costs to the final destination. If there is a conflict between an Incoterm referenced in a sales order and the Incoterms referenced above, these Terms and Conditions will prevail. Seller has the right to select the mode and route of shipment.

6. WARRANTIES. Seller warrants that: (a) the Materials will

(including, if expressly stated in the specifications, any relevant American Railway Engineering and Maintenance-of-Way Association (AREMA) standards), subject to tolerances and variations consistent with usages of trade and regular mill practices concerning dimension, weight and straightness, and will otherwise be free from defects in material, workmanship and title; and (b) the services, if any, will conform to applicable standards of skill, diligence and care and any written specifications provided in the Agreement. The foregoing warranties are given expressly and are in lieu of all other express or implied warranties, including, without limitation, implied warranties of merchantability and fitness for a particular purpose which are expressly disclaimed. The warranty period for Materials is 12 months from the date of delivery to Buyer or its carrier, and the warranty period for services is 90 days from completion of performance (the "Warranty Period").

7. REMEDIES. If Buyer believes that Seller has breached any warranty, Buyer shall notify Seller in writing by no later than the end of the Warranty Period. Buyer's sole remedy, and Seller's sole obligation, for breach of warranty (other than the warranty of title) shall be limited to: (a) repair or replacement of the relevant Materials at no cost, at Seller's option; (b) re-performance of the relevant services at no cost; or (c) allowance of a credit, at Seller's option. If any Materials fail to meet the warranty of title, Seller will promptly remedy any defects in title.

8. CONSEQUENTIAL LOSS; LIMITATION OF LIABILITY. Neither party will be liable to the other party for any consequential, special, incidental, indirect, exemplary or punitive damages or losses, or any loss of profits, revenues, opportunities, goodwill or capital. Seller's total liability under the Agreement will be limited to the amount paid by Buyer for the Materials/services giving rise to the claim.

9. INDEMNITY. Buyer shall defend, indemnify and hold harmless Seller and its affiliates and their respective officers, directors and employees, from and against any claims, liabilities, losses, damages or injuries of any kind (including, without limitation, reasonable attorneys' fees) caused by Buyer or the use or misuse of the Materials by Buyer or any third party after Buyer's receipt thereof; provided, however, Buyer shall have no obligation to indemnify hereunder if and to the extent that the relevant claim or liability is caused by an indemnified party. This provision shall not relieve Buyer of any pro rata, proportional, contributory or other allocation of liability under applicable laws.

10. FORCE MAJEURE. Neither party will be responsible for failure or delay in performing hereunder (except for the payment of money) due to a cause or circumstance which is beyond that party's reasonable control, including, without limitation, wars or civil disorders, fires, earthquakes, floods, severe weather, acts of God, changes in law or governmental directives, delays in transportation, material shortages, strikes, lockouts, slowdowns or other labor disruption.

11. GOVERNING LAW; FORUM. The Agreement is governed by the laws of, and each party submits to the exclusive venue and jurisdiction of the state or federal courts in, the State of Utah.

12 MISCELLANEOUS. Neither party may assign or transfer the Agreement, without the other party's prior written consent. No modification or amendment of the Agreement shall be binding unless it is in writing and signed by both parties. A party's waiver of any breach of, or failure to strictly enforce, the Agreement will not waive, limit or affect that party's right to do so thereafter.