

A&K RAILROAD MATERIALS, INC.
SALES ORDER TERMS AND CONDITIONS FOR RELAY MATERIALS AND INDUSTRIAL QUALITY RAIL
EFFECTIVE AS OF SEPTEMBER 3, 2019

1. DEFINITIONS; ENTIRE AGREEMENT. These Terms and Conditions apply to all sales of relay and other used materials and industrial quality rail (collectively the "Materials") by A&K Railroad Materials, Inc. ("Seller") to the entity identified on the sales order as the entity to which Seller is supplying the Materials ("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. Unless Buyer provides written notice to Seller that Buyer rejects the Materials before shipment, Buyer will be deemed to have accepted the Materials and these Terms and Conditions. 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 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 for the Materials 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. Once the Materials are shipped, there will be no returns. 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. WARRANTY. Seller warrants that it has good and marketable title to the Materials and right to transfer such title to Buyer.

7. INSPECTION AND CONDITION OF MATERIALS. The Materials are sold in "As Is, Where Is" condition, with all faults

and defects. Except for the express warranty in Section 6 hereof, all express or implied warranties (including, but not limited to, any warranty of merchantability or fitness for a particular purpose) are disclaimed. Buyer acknowledges that it has inspected or been given the opportunity to inspect the Materials, which are of a size, design and capability selected by Buyer and are suitable for its purposes.

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 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.