

**A&K RAILROAD MATERIALS, INC. PURCHASE ORDER TERMS AND CONDITIONS  
EFFECTIVE AS OF 09/01/2016**

**1. Definitions; Entire Agreement.** These Terms and Conditions ("TCs") apply to all purchase orders ("POs") issued by A&K Railroad Materials, Inc. ("Purchaser") to the seller identified on the PO ("Seller"). These TCs (together with the applicable PO, 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, Seller's standard terms and conditions and any terms in a quotation, acknowledgment, confirmation, acceptance, invoice, bill of lading or other instrument) are not binding and are rejected, unless agreed to in writing and signed by both parties.

**2. Acceptance; Conflict.** Seller will be deemed to accept the Agreement upon the first of the following to occur: (a) Seller signing and delivering to Purchaser any document acknowledging acceptance; (b) any performance by Seller, without written notice to Purchaser that Seller does not accept; or (c) the passage of 5 days after Seller's receipt of the PO without written notice to Purchaser that Seller does not accept. Purchaser may by written notice to Seller cancel the Agreement, in whole or in part, prior to shipment or if Seller fails to deliver the materials by the delivery date specified on the PO. If there is a conflict between these TCs and a provision elsewhere in the Agreement or any other document, these TCs will prevail.

**3. Shipping; Risk of Loss; Delivery; Title.** Shipping terms and risk of loss to the materials shall be in accordance with the Incoterm 2010® specified on the face of the PO, or if not specified, FCA (Seller's shipping point) Incoterms 2010®. Seller shall supply the materials to Purchaser at the location and by the date(s) specified in the PO. If a delivery route or carrier is specified on the PO, absent Purchaser's prior written authorization, Seller shall utilize such route and/or carrier and be responsible for any deviation therefrom. Where prices are exclusive of and Purchaser separately pays freight costs, whether by "freight collect", "freight pre-paid and add" or otherwise, Seller shall: (a) ensure that all railcars and trucks are loaded to maximum capacity to obtain the lowest possible freight rates; (b) ship in carload/truckload lots when the quantity of materials aggregates a carload/truckload, and bear all extra costs of failing to do so; and (c) ship the entire quantity at one time when the quantity of materials aggregates less than a carload/truckload. Title to the materials shall transfer to Purchaser when risk of loss passes to Purchaser in accordance with the applicable Incoterm 2010®.

**4. Packing; Labeling; Inspection.** Seller shall be responsible for appropriately packing the materials to assure safe transit. Seller shall not charge for packing, boxing, crating, cartage or loading unless specified on the PO. All shipments shall be marked with Purchaser's PO number and accompanied by a packing list specifying all items in the shipment. If Seller fails to include a packing list, Purchaser's count and receiving documents shall be final and conclusive. All materials shall be received subject to Purchaser's inspection and approval. Materials that are damaged by delivery or fail to conform to the Agreement may, at Purchaser's option, be returned to Seller, at its risk and expense, and may not be replaced by Seller without Purchaser's written authorization.

**5. Prices; Taxes; Invoices; Payment.** Seller shall supply the materials/services for the prices specified on the PO. The prices are exclusive of any sales, use, consumption or similar taxes payable on the sale of the materials/services; provided, however, Purchaser reserves the right to withhold payment of such taxes if it has provided a valid tax exemption certificate to Seller. Seller

shall provide a separate invoice in duplicate for each shipment within 30 days after shipment. Each invoice shall include: (a) Purchaser's PO number; (b) an itemization of, and the prices for, the materials/services covered by the invoice; (c) the freight costs, if any, for which Seller seeks payment by Purchaser; and (d) the taxes, if any, for which Seller seeks payment by Purchaser. Where prices are based on weight, payment will be on the basis of actual net weight as stated in Seller's certified weight tickets. If Seller fails to furnish certified weight tickets, Purchaser will determine net weight by theoretical computation and deduct a minimum of 5% of the gross weight. Unless specified otherwise on the PO, Purchaser will pay all undisputed amounts due to Seller within 30 days from receipt of a complete and correct invoice. No interest will be paid by Purchaser on overdue amounts. Payment of an invoice is not evidence or an admission that the materials/services are compliant.

**6. Warranties.** Seller warrants that: (a) the materials conform to standard American Railway Engineering and Maintenance-of-Way Association (AREMA) specifications and any written specifications provided in the PO; (b) the materials are free from defects in design (to the extent Seller furnishes the design), material, workmanship and title; and (c) the services, if any, conform to applicable standards of skill, diligence and care and any written specifications provided in the PO.

**7. Remedies.** In the event of non-compliance with any of the warranties in paragraph 6 hereof, Seller shall, at its sole cost (including any transportation and labor costs): (a) repair, replace or return for a refund the relevant materials at Purchaser's option; (b) re-perform the relevant services; and (c) promptly remedy any defect in title to the materials.

**8. Consequential Loss.** 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.

**9. Indemnity.** Subject to paragraph 8 hereof, Seller shall indemnify and hold harmless Purchaser 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 Seller's breach of the Agreement; provided, however, Seller shall have no obligation to indemnify if and to the extent that the relevant claim or liability is caused by an indemnified party. This provision shall not relieve Seller of any pro rata, contributory or other allocation of liability under applicable laws.

**10. Termination.** Without limitation to Purchaser's right to cancel the Agreement under paragraph 2 hereof, Purchaser or Seller may terminate the Agreement by written notice to the other party in the event of a material breach by the other party that is not cured within 30 days after written notice thereof has been given. Any termination hereunder shall be without prejudice to any claims for damages or other rights of the parties.

**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 where the office of Purchaser issuing the PO is located.

**12. Miscellaneous.** Neither party may assign or transfer the Agreement, without the other party's prior written consent. Any modification or amendment of the Agreement must be 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.