

## TERMS AND CONDITIONS

**1. ACCEPTANCE.** If this purchase order is an offer, Seller's acceptance of this purchase order shall be on, and expressly limited to, these terms and conditions. If this purchase order is an acceptance of an offer, acceptance is expressly made conditional on Seller's assent to these terms and conditions. Seller's shipment of any materials and/or goods (collectively, "Goods") covered hereunder shall constitute acceptance of and assent to these terms and conditions. Seller shall not ship any Goods covered hereby under reservation. None of Seller's terms and conditions of sale contained in any quotation, acknowledgment, invoice or acceptance of this purchase order shall apply. In the event of a conflict between the terms and conditions contained herein and a written contract, if any, executed by both the parties, the written contract shall control.

**2. TERMINATION AT BNSF'S OPTION.** This purchase order may be terminated by BNSF upon 30 days written notice.

**3. SHIPPING AND ROUTING INSTRUCTIONS.** All freight billing covering material shipped on this order must show the name of the Seller as the Shipper, and proper commodity identification for rate purposes. Shipper is required to fill out a proper bill of lading which is to include the following elements: BNSF - Consignee name, address, telephone number and BNSF tracking document number. Routing instructions must be followed. Failure to comply with BNSF's routing instructions may result in shipper/supplier charge-backs. When shipping multiple units shipper is required to complete a consolidated BOL/manifest, where it might provide a lower rate but not delay the shipment. Shipper is responsible for all applicable taxes and custom brokerage fees for shipments originating outside of the USA and Canada.

**4. WEIGHT LABELING REQUIREMENTS.** All Goods shall be suitably packed and properly marked or otherwise prepared for shipment so as to secure the lowest transportation rates and to meet carrier's requirements. Shipments of Goods weighing 35 pounds and over shall be clearly labeled with the weight of the item/package. Items that are lifted by the center through mechanical means are to have a center mark placed thereon. Goods shipped via package carrier are to be limited to 150 pounds or less.

**5. DELIVERY.** Shipment must be made so as to reach destination by the date required on the face of this purchase order and not before or invoice may, at BNSF's discretion, be held until date of specified delivery before processing for payment. BNSF reserves the right to change shipping schedules or direct a temporary suspension of scheduled shipments. BNSF reserves the right to cancel this purchase order for failure to comply with any one or more of the specifications and the terms and conditions set forth in this purchase order. At BNSF's discretion, Goods put in transit after shipping date specified without BNSF's prior written consent, may be refused or returned at Seller's expense, including all transportation costs incurred.

**6. 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 this purchase order or, if no F.O.B. point is specified herein, until such Goods are accepted for delivery by BNSF. Notwithstanding the foregoing, if the Goods purchased hereunder are explosive, flammable, toxic or otherwise hazardous, Seller shall hold BNSF and its affiliates harmless against all claims asserted against BNSF 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 BNSF.

**7. INSPECTION.** BNSF or its duly authorized representative shall have the right to test and inspect all Goods ordered hereunder before accepting delivery of such Goods or making payment for such Goods.

**8. INVOICING AND CASH DISCOUNTS.** All invoices must be submitted to BNSF electronically via EDI and utilizing rail industry guidelines. Invoices must match the purchase order exactly. For additional invoicing guidelines Seller may refer to BNSF's website at [www.bnsf.com](http://www.bnsf.com). Invoicing guidelines and standards may be viewed at [www.bnsf.com/supplier/pay](http://www.bnsf.com/supplier/pay). If additional questions remain, an email should be sent to [electronicAP@bnsf.com](mailto:electronicAP@bnsf.com). Packaging and drayage charges are not permitted. Seller shall submit invoices timely. Invoices received after 90 days from the date of delivery of the product or service may not be paid. Seller's who do not have EDI capability may utilize a third party provider to convert their paper invoices into an acceptable EDI invoice by mailing their paper copies to: BNSF Supplier, P.O. Box 30065, College Station, TX 77845. There is a charge to the Seller for this service. It is agreed invoice terms begin when BNSF receives a valid and acceptable invoice. Payment of Seller's invoice does not constitute final acceptance of Goods, services or other charges.

**9. PRICE OFFSET.** Any price decrease announced by Seller for the same or similar goods or services shall automatically reduce the price of the Goods or services purchased hereunder by a comparable amount or percentage. BNSF shall have the right to withhold monies payable by it hereunder and apply them to the payment of any obligation of Seller to BNSF or any other part arising in any manner out of this purchase order.

**10. WARRANTIES.** Seller warrants that all Goods and services when delivered pursuant hereto (a) are free from any claim of infringement of third party intellectual property claims, (b) will be merchantable and free from defects in workmanship or material, and (c) will conform strictly to the applicable specifications, drawings or samples. By acceptance of the purchase order, Seller warrants that the Goods will not materially fail to operate according to their specifications within the normal operating life of such Goods. THIS WARRANTY IS IN ADDITION TO ANY AND ALL OTHER PRODUCT WARRANTIES AND REPRESENTATIONS SET FORTH WITH RESPECT TO SUCH GOODS AND SERVICES AND SHALL SUPERCEDE ANY DISCLAIMER OR NOTICE THAT ATTEMPTS TO LIMIT SUCH WARRANTY.

**11. REMEDIES.** If any portion of the Goods purchased hereunder are incomplete or defective, or fail to satisfy any product description, specifications, performance requirements or warranties, BNSF shall have the right (a) to return such Goods to Seller, at Seller's risk, and Seller shall pay BNSF for all packing, handling, and transportation expenses, (b) to cause Seller to pay BNSF promptly for expenses incurred in remedying the defective or nonconforming Goods, or (c) to cause Seller, at Seller's expense, to expeditiously replace, upgrade or repair any defective or rejected Goods. The remedies set forth herein are in addition to any other remedy provided by any written agreement between BNSF and Seller, by law or by equity. IN NO EVENT SHALL BNSF OR ITS AFFILIATES BE LIABLE FOR ANY AMOUNT EXCEEDING THE AGGREGATE PURCHASE PRICE SPECIFIED IN THIS PURCHASE ORDER. IN NO EVENT SHALL BNSF OR ANY OF ITS AFFILIATES BE LIABLE, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION EVENTS) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS PURCHASE ORDER.

**12. REPAIR RIGHT.** BNSF shall have the right to repair any of the Goods purchased and for that purpose to purchase repair parts in the open market, or to manufacture them itself, as it may determine, and if said Goods consist of rolling stock or equipment which is ordinarily interchanged with other railroads, it may be repaired by other railroads no matter where the repair parts are obtained. BNSF, or such other railroads, no matter with whom these Goods may be

interchanged, shall have the right to purchase repair parts in anticipation of breakage, or weakness, instead of waiting until the breakage actually occurs.

**13. INDEMNITY.** SELLER SHALL INDEMNIFY BNSF AND ANY PARTY WHO SELLS OR USES ANY OF BNSF'S PRODUCTS OR SERVICES THAT UTILIZE GOODS AND SERVICES PURCHASED HEREUNDER, AND HOLD EACH OF THEM HARMLESS AGAINST ALL LOSSES, LIABILITIES, DAMAGES, COSTS, AND EXPENSES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES, ARISING FROM (A) ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT BY ANY OF THE GOODS OR SERVICES DELIVERED HEREUNDER OR THEIR USE; (B) CLAIMS OF INJURY OR DEATH TO PERSON OR DAMAGE TO PROPERTY SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY ANY ENTITY OR PERSON CAUSED BY, OR ALLEGED TO HAVE BEEN CAUSED BY, DEFECTIVE GOODS FURNISHED HEREUNDER OR BY ANY ACT OR OMISSION, NEGLIGENCE OR OTHERWISE, OF SELLER OR ANY SUBCONTRACTOR OF SELLER OR ANY OF THEIR EMPLOYEES, WORKMEN, SERVANTS, OR AGENTS; (C) LABOR OR MATERIAL LIENS ARISING OUT OF OR ON ACCOUNT OF THE GOODS PURCHASED HEREUNDER OR THEIR USE OR OF ANY WORK PERFORMED BY SELLER OR ANY SUBCONTRACTOR OF SELLER; (D) 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 THIS PURCHASE ORDER; AND (E) FINES AND CIVIL OR CRIMINAL PENALTIES ARISING OUT OF THE MANUFACTURE OR DELIVERY OR PERFORMANCE BY SELLER OF GOODS OR SERVICES HEREUNDER. BNSF'S OR ANY OTHER THIRD PARTY'S NEGLIGENCE OR MISCONDUCT SHALL NOT MITIGATE OR OTHERWISE INVALIDATE SELLER'S LIABILITY UNDER THIS PARAGRAPH. PROMPTLY ON BNSF'S REQUEST, SELLERS SHALL 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.

**14. ON-SITE WORK.** Should it become necessary for the Seller or its employees or agents to enter upon the premises or property of BNSF 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 BNSF for any damage to BNSF's property, or to the property of others, and shall indemnify, save harmless and assume the cost of defense of BNSF from and against any loss, damage, expense, injury or liability for death, or of 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 BNSF's premises or property, or in connection with any activities of Seller pursuant to this purchase order.

**15. ASSIGNMENT AND SUBCONTRACTING.** Seller shall not delegate any duty or assign this purchase order in whole or in part or make any subcontract for furnishing Goods or services hereunder or assign any claim arising or sum payable hereunder without the prior written consent of BNSF. Any attempted delegation, subcontract or assignment shall be void.

**16. CLAUSES INCORPORATED BY REFERENCE.** BNSF hereby incorporate the requirements of Section 202 of Executive Order 11246 as amended, the equal opportunity clause pertaining to all persons without regard to race, color, religion, sex, or national origin contained in 41 C.F.R. § 60-1.4 (a) (7). The equal opportunity clause pertaining to Special Disabled Veterans and Veterans of the Vietnam Era contained in 41 C.F.R. § 60-250.5. The equal opportunity clause pertaining to persons with disabilities contained in 41 C.F.R. § 60-741.5. The equal opportunity clause pertaining to Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans contained in 41 C.F.R. § 60-300.5. The requirements of Executive Order 13201, the employee notice clause contained in 29 C.F.R. § 470.2 (a) (4).

**17. PURCHASE ORDER TAX EXEMPTION CODES.** Failure to indicate tax exemption shall not preclude BNSF from claiming whatever exemptions are applicable to the purchase of Goods and/or services covered by this purchase order.

(a) In cases where material purchased by BNSF is received in a state in which BNSF holds a direct pay permit, taxes will be paid directly to the applicable state by BNSF. BNSF holds a direct pay certificate (with corresponding certificate number) in the following states: Idaho - 000058994-S, Iowa - 1-80-902835, Kansas - 48, Minnesota - 1037, Mississippi - 2519, Nebraska - 01-1454188, North Dakota - 45346, South Dakota - SD DP 1001, Texas - 1-416034000-7, Washington - 00044, Wisconsin - WDP 00-01-01041, Wyoming - 27-0-00011. You may obtain a copy of BNSF's direct pay permits by going to our website: <http://www.bnsf.com/bnsf.was5/ec/ECCentralController>

**18. MODIFICATION.** No modification of this purchase order shall be binding on BNSF unless in writing and signed by BNSF or its duly authorized agent. Usage of trade, course of performance, and course of dealing shall not supplement or modify the written terms of this purchase order. BNSF's (a) failure to insist on strict performance of any term or condition hereof, (b) failure or delay to exercise any right or remedy provided herein or by law or to properly notify Seller in the event of breach, (c) acceptance of or payment for Goods hereunder or (d) approval of any design shall not release Seller from any of the warranties or obligations provided herein or by law and shall not be deemed a waiver of any right of BNSF to insist upon strict performance hereof or of any of its rights or remedies as to any prior or subsequent default hereunder nor shall any purported oral modification or rescission of this purchase order by BNSF operate as a waiver of any term or condition hereof.

**19. GENERAL.** In the performance of work hereunder, Seller and its subcontractors shall comply with all applicable federal, state and local laws and rules and regulations and shall furnish evidence of such compliance as requested by BNSF. Nothing in this purchase order or any acceptance hereof shall constitute Seller or any of its officers, directors, or employee's as being appointed BNSF's agent, legal representative or employee. These terms and conditions will be construed and governed by the laws of the State of Texas, without regard to its conflict of laws principles. For purposes of this Agreement, "BNSF" refers to BNSF Railway Company and its subsidiaries and affiliates. The provisions of this purchase order shall inure to the benefit of and be binding upon the principals, agents, personal representatives, successors and assigns of the Seller and the agents, successors and assigns of BNSF.

**20. ELECTRONIC SIGNATURES.** Seller and BNSF agree to utilize digital signatures for the execution of this 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 this purchase order utilizing a digital signature. Seller agrees not to contest the validity or enforceability of this purchase order.