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February 4, 2015
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February 4, 2015

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

Re: Docket No. NOR-⁴²¹⁴⁰~~42149~~, Colorado Wheat Administrative Committee,
Colorado Association of Wheat Growers, Colorado Wheat Research
Foundation and KCVN, LLC

Dear Ms. Brown:

Attached for filing in the subject proceeding is the Motion for Protective
Conditions of V and S Railway, LLC.

Information about my credit card to be used for payment of the \$300 filing fee
was facsimile transmitted to the Board earlier today.

If you have any question concerning this filing or if I otherwise can be of
assistance, please get back to me.

Sincerely yours,


Fritz R. Kahn

Att.

Cc: Thomas W. Wilcox, Esq.
Mr. Terry Whiteside

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42140

COLORADO WHEAT ADMINISTRATIVE COMMITTEE,
COLORADO ASSOCIATION OF WHEAT GROWER,
COLORADO WHEAT RESEARCH FOUNDATION
AND KCVN, LLC

v.

V AND S RAILWAY, LLC

MOTION FOR PROTECTIVE CONDITIONS
OF
V AND S RAILWAY, LLC

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Attorney for

V AND S RAILWAY, LLC

Dated: February 4, 2015

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42140

COLORADO WHEAT ADMINISTRATIVE COMMITTEE,
COLORADO ASSOCIATION OF WHEAT GROWER,
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V AND S RAILWAY, LLC

MOTION FOR PROTECTIVE CONDITIONS
OF
V AND S RAILWAY, LLC

V and S Railway, LLC (“V&S”), the owner of the Towner Line in Colorado, pursuant to 49 C.F.R. § 1114.21(c), respectfully moves the Board to enter an order restraining the Complainants from using further discovery to annoy, oppress or impose undue burden and expense on V&S and to prevent the raising of issues inappropriate to the proceeding initiated by Complainants, and in support of its request V&S states, as follows.

Complainants’ Complaint Alleging Violations of 49 U.S.C. § 10903 and § 11101, filed October 28, 2014, asserted that “V&S unlawfully began tearing up and selling for scrap the tracks and other track assets that comprise the 60.2 mile ‘Western Segment’ of the Towner Line.” Their Complaint continued, “Complainants ask the Board to rule that V&S’s actions regarding the Western Segment were unlawful, and order V&S to restore the Western Segment to its condition prior to the date KCVN presented its offer” to purchase the entire Towner Line for \$10 million. The Board, by its Decision, served

October 31, 2014, granted “the Emergency Order sought by the Colorado Interests and enjoin[ed] V&S from dismantling and removing any tracks or related assets of the Western Segment until the Board has ruled on the Motion for Preliminary Injunction.”

V&S is well aware that pursuant to 49 C.F.R. § 1114.21(a), Complainants are entitled to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the proceeding they initiated. Complainants, however, have changed completely the tenor of the proceeding and currently are pursuing an altogether different objective, namely, the acquisition by KCVN, LLC of the entire Towner Line. Instead of offering a reasonable purchase price to permit its sale by V&S without the need for Board participation, Complainants revealed in their Supplement to Motion for Preliminary Injunction, filed December 23, 2014, that KCVN, LLC now is asking that “the Board should take action to require V&S to seek abandonment authority for the entire Towner Line, thereby creating the possibility of KCVN or other responsible parties acquiring it through the OFA process and potentially reinstating rail service over it.”

Complainants are using discovery not for its intended purpose but rather to annoy, provoke and humiliate V&S in the hope and expectation that, rather than continue to resist their efforts, V&S will succumb to the offer of KCVN, LLC to buy the entire Towner Line for the \$10 million it had offered to pay for it in its July 28, 2014, letter to V&S. Complainants’ First Discovery Requests, served on V&S on November 21, 2014, and their Motion to Compel, filed with the Board on December 16, 2014, are nothing more than the “hardball” negotiating tactics employed by KCVN, LLC to buy the Towner Line. KCVN, LLC “low-balled” V&S with its \$10 million purchase offer and then flatly rejected V&S’ counter offer of \$26,951,300 which is the appraised net liquidation value

of the Towner Line arrived at by R. L. Banks & Associates, Inc., a highly respected appraiser that KCVN, LLC itself had proposed in its July 28, 2014, letter.

The fact of the matter is that V&S responded truthfully and completely to the Complainants' discovery requests. Attached are copies of Complainants' Motion to Compel Discovery and of V&S' Reply, filed January 2, 2015. In the meantime, on December 31, 2014, V&S mailed to Complainants' counsel its response to Complainants' First Discovery Requests, a copy of which is attached.

Complainants' discovery requests and V&S' response will not change the undisputed fact that there has been no freight shipment and no written communication, call or other request by a shipper of any kind for service or transportation to be provided by V&S on the Western Segment of the Towner Line in more than four years' time.

V&S understands that Complainants find it offensive that in its response V&S indicated that the Complainants should have looked at pleadings and decisions retrievable from the Board's web page before demanding that V&S provide them with copies. Document requests 1, 2, 3, 4, 5b, 5c and 16 were fulfillable by the pleadings of the parties and the decisions of the Board in the proceedings cited by V&S. Seeking to put V&S to the time and expense of retrieving those documents when they were as readily available to the Complainants is a perfectly good example of the undue burden and expense which Complainants seek to impose on V&S, the avoidance of which is sought by V&S in moving for a protective order.

Similarly V&S suggested in its response that Complainants are as able to review the publicly available documents of the Colorado Legislature and the Colorado Department of Transportation as V&S. Nevertheless, V&S understands that

Complainants consider it inappropriate for them to have looked at that material before insisting that V&S do so in their stead. Document requests 1, 2, 3, 4 and 10a rendered examination of the Colorado government's files the means for responding, and Complainants very well could have viewed them before insisting that V&S do so. This is yet another example of the undue burden and expense which Complainants endeavor to force on V&S and why it is that V&S has moved the Board for a protective order.

V&S understands that Complainants question the V&S' veracity when it responded to document request 5a to "provide all documents relating to, discussing, referring to, or commenting on [V&S'] plans and actions taken to abandon" the Western Segment of the Towner Line that there are none. V&S sought and the Board granted the authorization to discontinue operations on the Western Segment in Docket No. AB 603 (Sub-No. 2X), V & S Railway, LLC—Discontinuance of Service Exemption—in Pueblo, Crowley and Kiowa Counties, Colo. (STB, served June 28, 2012) 77 Fed. Reg. 38713, June 28, 2012. That unquestionably enabled V&S to remove the rails and track materials, if it so desired, and it permitted V&S to refuse to render service or transportation in response to a reasonable request, if it were to receive one. The abandonment of the Western Segment would serve no purpose, and V&S did not and has not any plans or taken any actions for its abandonment. Complainants' characterization of V&S' response is a form of annoyance and oppression, which V&S by moving for a protective order asks the Board to require Complainants to cease imposing.

Complainants' document request 6 sought information about any shippers on the Towner Line. V&S responded that there were only two shippers which received little or no service from V&S, and they were located on the eastern segment of the Towner Line.

V&S understands that Complainants are perturbed that V&S responded, “Information and documents, if any, relating to the two [s]hippers are irrelevant to the current proceeding before the STB, which is limited to the Western Segment, and thus are not subject to production by Defendant.” Complainants’ Complaint and the Board’s Decision render the Complainants’ document request inappropriate to the proceeding, and it is to prevent Complainants’ misuse of discovery that V&S is asking the Board for a protective order pursuant to 49 C.F.R. § 1114.21(c).

Document request 7 pertains to the letter which counsel for Kiowa County sent to counsel for V&S on August 22, 2014. V&S understands that Complainants are dissatisfied with V&S’ response that by an earlier e-mail counsel for V&S advised the counsel for Kiowa County that he disagreed with his assertion that the alleged removal of rails and track materials constituted an abandonment in violation of 49 U.S.C. § 10903 unless authorized by the Board. Therefore, V&S simply disregarded the August 22, 2014, letter, and its response to Complainants’ discovery request was complete and truthful. This is yet another example of the annoyance and oppression which Complainants’ discovery imposes on V&S and which V&S seeks the Board to halt by its request for the protective order.

In response to Complainants’ document request 8 V&S produced a copy of the Track Material Sales Agreement between V&S and A&K Railroad Materials, Inc. (“A&K”), dated August 1, 2014. V&S understands that Complainants infer that V&S is untruthful in maintaining that there aren’t additional documents that should have been produced. This is yet another example of the annoyance and oppression that

Complainants' discovery inflicts on V&S and which V&S asks the Board to stop by entering the requested protective order.

V&S understands that the Complainants are dissatisfied with V&S' responses to additional document requests, but to go through each one is unnecessary and would lengthen unduly V&S' request for a protective order. The foregoing render it evident that Complainants are using discovery to annoy and oppress V&S, to subject V&S to undue burden and expense and to raise issues inappropriate to the proceeding which Complainants initiated. It is for these reasons that V&S respectfully asks that the Board enter a protective order preventing Complainants to pursue their document requests in this manner.

There are two written interrogatories which V&S understands Complainants consider V&S' responses to be evasive or incomplete. Written interrogatory 9 asked for the "date on which Defendant first discussed selling the rail track materials of the Western Segment to any potential purchaser." The Defendant is V&S, and V&S correctly answered "None". If there was any discussion of selling the track materials of the Western Segment to any potential purchaser, it would have been by A&K and not V&S. Written interrogatory 10 is completely inappropriate to the proceeding initiated by the Complainants. It asks for information about rail carriers acquired by V&S or any other affiliate of A&K in the past 10 years, which ones have been abandoned in the meantime and what disposition was made of the salvaged track materials following the rail carrier's abandonment. V&S probably should have responded that the interrogatory was inappropriate to the proceeding initiated by Complainants. Instead, however, V&S responded fully to the interrogatory, giving the names of the rail carriers, identifying the

ones that have been abandoned and stating that records of the salvaged track materials and their disposition are not maintained by the name of the rail carrier. Nevertheless V&S understands that Complainants are dissatisfied with V&S' response and maintain that they should have been provided with even more information about the rail carriers.

This motion for protective conditions and Complainants' evident intent to file yet another motion to compel discovery would both be rendered unnecessary if the Board expeditiously were to decide the simple and single "legal issue" initially raised by the Complainants in this proceeding, namely, whether V&S has the right to remove the rail and track materials from the Western Segment of the Towner Line on which the Board authorized V&S' discontinuance of service, as urged by V&S, or must V&S have the Board's abandonment authorization to do so, as urged by the Complainants.

The Board's stay order of October 31, 2014, prohibiting V&S from dismantling and removing any track materials and related assets pending the Board's decision on the Complainants' Motion for Emergency and Preliminary Relief effectively has provided the Complainants the relief they requested and has continued to cause great harm to V&S and A&K. Not wanting to face a breach of contract claim by OmniTRAX's Great Western Railway of Colorado, LLC ("GWR"), with which A&K has contracted to sell the rail of the Western Segment of the Towner Line and potentially lose an important customer, A&K has gone ahead and furnished GWR with approximately one-third of the material with much more expensive new rail purchased on the open market elsewhere at a significant loss to A&K. A&K is now in a position where it soon must supply GWR with the remaining two-thirds of the material, and it needs to know whether it can provide the rail of the Western Segment of the Towner Line or whether, again, it must purchase new

rail, at a significant loss, on the open market to fulfill its contractual obligation to supply GWR.

WHEREFORE, V and S Railway, LLC respectfully moves the Board to enter an order restraining Complainants from using further discovery to annoy, oppress or impose undue burden and expense on it and to prevent the raising of issues inappropriate to the proceeding initiated by Complainants.

Respectfully submitted,

V AND S RAILWAY, LLC

By its attorney,

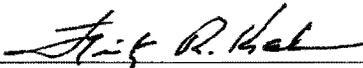

Fritz R. Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152

Dated: February 4, 2015

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Motion for Protective Conditions on the wheat interests by mailing a copy by prepaid first-class mail to their representative, Mr. Terry Whiteside, and on KCVN, LLC by e-mailing a copy to its attorney, Thomas W. Wilcox at twilcox@gkgilaw.com.

Dated at Washington, DC, this 4th day of February, 2015.


Fritz R. Kahn

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

COLORADO WHEAT)
ADMINISTRATIVE COMMITTEE,)
COLORADO ASSOCIATION OF)
WHEAT GROWERS, COLORADO)
WHEAT RESEARCH FOUNDATION)
4026 South Timberline Road, Suite 120)
Fort Collins, CO 80525)

And)

KCVN, LLC)
515 Congress Avenue, Suite 2450)
Austin, Texas 78701)

vs.)

Docket No. NOR 42140

V&S RAILWAY, LLC)
1505 South Redwood Road)
Salt Lake City, Utah 84104)

COMPLAINANTS' MOTION TO COMPEL DISCOVERY

Pursuant to 49 C.F.R. §1114.31, Colorado Wheat Administrative Committee (“CWAC”), Colorado Association of Wheat Growers (“CAWG”) Colorado Wheat Research Foundation (“CWRF”) and KCVN, LLC (“KCVN”) (together “Complainants”), hereby move for an order compelling Defendant V&S Railway, LLC (“V&S”) to respond to the Complainants’ First Discovery Requests served on V&S on November 21, 2014, appended hereto as Attachment 1, and to grant other relief set forth herein below. In support thereof, Complainants demonstrate as follows:

On October 28, 2014, Complainants filed a Complaint in this docket alleging that V&S violated 49 USC §10903 and §11101 by beginning to dismantle, remove, and sell railroad track

assets of an approximately 121.9 mile line of a railroad in Colorado owned by V&S known as the "Towner Line" without first seeking abandonment authority from the Board (the "Complaint"). Concurrently, Complainants submitted with the Board a Motion for Emergency and Preliminary Injunctive Relief, requesting that the Board issue an order enjoining V&S from dismantling and removing the tracks and related assets of the "Western Segment" of the Towner Line until the Board reviews and rules on the Complaint (the "Motion"). On October 31, 2014, the Board issued a decision that granted Complainants' Motion to the extent it asked for emergency relief, and enjoined V&S from dismantling the track or related assets of the Western Segment. The Board took no other action in that decision.

Since filing a reply to Complainant's Motion on October 30, 2014, V&S has refused to comply with the Board's rules governing the processing of formal complaints. First, V&S intentionally did not file an answer to the Complaint. Second, V&S refused to engage in a discussion of procedural and discovery issues pursuant to 49 C.F.R. §1111.10(a). This forced Complainants to file a Report Pursuant to 49 C.F.R. §1111.10(a) and Motion for Establishment of Procedural Schedule ("Schedule Motion") on December 5, 2014, to which V&S has yet to reply. Third, counsel for V&S informed counsel for Complainants that V&S would not respond to Complainants' First Discovery Requests, served on November 21, 2014 because V&S deemed the requests to be "premature." *See* correspondence appended as Attachment 2 to the Schedule Motion. Complainants requested that V&S respond to their First Discovery Requests by December 11, 2014, but that date passed without any responses or objections from V&S being received.

V&S has no justification for refusing to respond to Complainants' discovery requests, and it has offered none, except for its obviously wrong position that the Board's October 31 decision

granting Complainants' request for emergency relief somehow stayed all actions by the parties in this complaint proceeding. Pursuant to the Board's rules of procedure, a party may obtain discovery "regarding any matter, not privileged which is relevant to the subject matter involved in a proceeding." 49 CFR §1114.21. All of Complainants' discovery requests are clearly relevant to the issues presented by their Complaint. The requests were timely served, and V&S was given more than the required 15 days to respond with either objections or responses. The Board has previously found the failure to answer discovery requests "not sufficient to satisfy a party's discovery obligations" and held that it expects parties to comply with discovery requests in a "prompt and forthright manner." See *Ocean Logistics Management, Inc. v. NPR, Inc. and Holt Cargo Systems, Inc.*, 2000 WL 28235 (STB Served January 14, 2000). *Trailer Bridge, Inc. v. Sea Star Lines, LLC*, 2000 WL 1616612 (STB Served October 27, 2000).

In light of foregoing, Complainants hereby respectfully request that the Board issue an order granting the following relief, and for such other relief as the Board deems just and appropriate under the circumstances:

(a) That Complainants' Requests for Admission are deemed admitted pursuant to 49 C.F.R. §1114.27(a) because V&S failed to serve any written answers or objections to them within 15 days of their service;

(b) Compelling V&S to immediately provide complete answers to all of Complainants' written interrogatories and responses to Complainants' document requests pursuant to 49 C.F.R. §1114.31, and that V&S has waived any objections to such requests; and

(c) Requiring V&S, pursuant to 49 C.F.R. §1114.31(d), to pay the reasonable expenses of Complainants, including attorneys fees, associated with the preparing and filing of

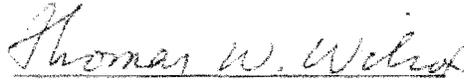
this motion, since V&S's failure to respond to Complainant's discovery requests was clearly willful, and without any justification.

Respectfully submitted,



Terry Whiteside
Registered STB Practitioner
Whiteside & Associates
3203 Third Avenue North, Suite 301
Billings, MT 59101
(406) 245-5132

*Representative for CWAC, CAWG
and CWRP*



Thomas W. Wilcox, Esq.
Svetlana Lyubchenko, Esq.
GKG Law, P.C.
Canal Square
1054 31st Street, N.W., Suite 200
Washington, DC 20007
(202) 342-5248

Counsel for KCVN, LLC

December 16, 2014

Attachment 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

COLORADO WHEAT)
ADMINISTRATIVE COMMITTEE,)
COLORADO ASSOCIATION OF)
WHEAT GROWERS, COLORADO)
WHEAT RESEARCH FOUNDATION)
4026 South Timberline Road, Suite 120)
Fort Collins, CO 80525)
)
And)
)
KCVN, LLC)
515 Congress Avenue, Suite 2450)
Austin, Texas 78701)
)
)
vs.)
)
V & S RAILWAY, LLC)
1505 South Redwood Road)
Salt Lake City, Utah 84104)

Docket No. NOR 42140

COMPLAINANTS' FIRST DISCOVERY REQUESTS

Complainants Colorado Wheat Administrative Committee ("CWAC"), Colorado Association of Wheat Growers ("CAWG") Colorado Wheat Research Foundation ("CWFR") and KCVN, LLC ("KCVN") (together "Complainants") hereby serve their First Discovery Requests upon Defendant V & S Railway, LLC ("V & S") pursuant to 49 C.F.R. Part 1114. Responses and responsive documents, as well as any objections, must be delivered by December 11, 2014 to counsel for KCVN, LLC, Thomas W. Wilcox and Svetlana V. Lyubchenko, GKG Law, P.C., 1054 31st Street, N.W., Suite 200, Washington, DC 20007, and also to Mr. Terry Whiteside,

Whiteside & Associates, 3203 Third Avenue North, Suite 301, Billings, Montana, 59101, representative of CWAC, CAWG, and CWFR.

INSTRUCTIONS

1. The Requests for Admissions, Written Interrogatories and Document Requests ("Requests") call for all non-privileged information which is in the possession, custody, or control of Defendant and its affiliates, subsidiaries and counsel.

2. Where a Request has a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion. Any objection to a Request should clearly indicate the subdivision, part, or portion of the Request to which it is directed.

3. Each Request shall operate and be construed independently, and, unless otherwise indicated, no Request limits the scope of any other Request.

4. Words used in the singular shall include the plural and words used in the plural shall include the singular, whenever the context permits. Terms such as "and," "or," or "including" shall be construed in the broadest and most inclusive manner, in the disjunctive or conjunctive as necessary, in order to call for all responsive information without limitation.

5. References to the present tense shall be construed to include the past tense, and references to the past tense shall be construed to include the present tense, as necessary to bring within the scope of each Request all documents that might otherwise be construed to be outside the scope of the Request.

6. If Defendant believes that any request or definition or instruction applicable thereto is ambiguous, it should set forth the language that it believes is ambiguous and the interpretation that it is using in responding to the Request.

7. If any document covered by a Request is withheld for whatever reason, including any privilege, Defendant shall furnish a written document identifying all withheld documents in the following manner:

- a. the specific Request to which the document is responsive;
- b. the date of the document;
- c. the name of each author or preparer;
- d. the name of each person who received the document and the name of such person's employer at the time the person received the document;
- e. a brief description of the subject matter of the document and any withheld attachments or appendices;
- f. the specific factual and legal basis for withholding; and
- g. the number of pages withheld.

8. Each document produced shall be an authentic original document or a true duplicate of an authentic original document.

9. These Requests cover the period from December 1, 2005 to the date you serve your response, unless otherwise indicated.

10. All Requests are continuing and amended or supplemental responses shall be provided if and when responsive new information and documents are discovered by Defendant.

11. Identify all persons who provided information for each response.

DEFINITIONS

“Acquisition Petition” means the filing made by Defendant in STB Docket No. FD 35664 on August 15, 2012, seeking the Board’s authorization to purchase the Towner Line and to have approval of the purchase made retroactive to December 29, 2005.

“Document” means all writings in any form whatsoever, including but not limited to letters, electronic mail, memoranda, reports, agendas, hand-written materials and meeting notes. The term “documents” also includes all drafts of all writings in any form whatsoever.

“Eastern segment” means the 38-mile segment of the Towner Line between MP 749.5 and MP 787.5.

“Identity” or “Identify” means to state the name, employer, and title of the subject of the request.

“Middle segment” means the 20.8-mile segment of the Towner Line between MP 808.3 and MP 787.5.

“Possession, custody or control” means any document or other information that is within the possession or control of a defendant or any of its employees, agents, or affiliates or subsidiaries and their employees.

“Rail Track Material” means railroad track, ties, spikes, tie plates and other materials typically utilized to construct a freight railroad line of rail, either together or individually.

“Refer or relate” means to have any direct or implied reference or relationship to any subject matters to which such phrase is applied.

“Towner Line” means the Class III railway located in eastern Colorado and running through Kiowa, Otero and Crowley Counties, extending approximately 121.9 miles between milepost 747.5 near Towner on its eastern terminus, and milepost 869.4 near NA Junction, an interchange with BNSF Railway, on its Western terminus.

“You or your” means Defendant or any of its affiliates and consultants. The terms “you,” “your,” and any other nouns or pronouns shall be gender inclusive.

“Western segment” means the 60.2 miles of the Towner Line between MP 868.5 and MP 808.3 near Haswell, Colorado.

REQUESTS FOR ADMISSION

1. Please admit that by the time KCVN submitted its offer to purchase the Towner Line on July 28, 2014, Defendant and/or its affiliate, A&K Railroad Material, Inc. had already been having discussions with third parties about selling the Rail Track Material making up the Towner Line.

2. Please admit that between the time KCVN submitted its offer to purchase the Towner Line on July 28, 2014 and the end of August, at the earliest, Defendant and/or its affiliate, A&K Railroad Material, Inc. had already been engaged in activities to prepare the rail line for dismantlement, including but not limited to, removing spikes and/or tie plates and other activities from the rail track making up the Towner Line.

WRITTEN INTERROGATORIES

1. Please identify all persons who participated in any and all discussions, negotiations, or decision-making regarding selling the Rail Track Material of any portion of the Towner Line.

2. Please provide the names of any third party consultant that Defendant has retained to conduct any valuation of the Towner Line, the underlying land and the Rail Track Material making up the Towner Line.

3. Please identify all persons who have been in contact with Defendant regarding purchasing the Rail Track Material of the Towner Line, whether or not such persons contracted with Defendant to purchase the Rail Track Material.

4. Please identify all persons who have contacted Defendant with requests for transportation over the Towner Line in the past three years, including all persons who requested quotes for such transportation.

5. Please identify all persons employed by Defendant and/or its affiliates who participated in any and all discussions, negotiations, or decision-making regarding selling the Rail Track Material of the Towner Line.

6. Please describe the corporate relationship between Defendant and A&K Railroad Material, Inc., and the interrelationship between Defendant and A&K Railroad Material, Inc. when it comes to the acquisition, operation, and disposition of common carrier lines of rail.

7. Please provide the total amount of Defendant's maintenance expenditures in 2011, 2012, 2013, and 2014 to date, for each segment of the Towner Line, specifically, the Western Segment, the Eastern Segment, the Middle Segment, and the portions of the track on either end that were not included in either the Western or Eastern Segments.

8. Please provide a description of all actions Defendant took to formally abandon the Western Segment after August 15, 2012, when Defendant informed the STB in the Acquisition Petition that it expected to seek authority to abandon the Western Segment "in the near future."

9. Please provide the date on which Defendant first discussed selling the Rail Track Material of the Western Segment to any potential purchaser.

10. Please provide a listing of all acquisitions of common carrier lines of rail by A&K Railroad Material, Inc. Defendant, and any other affiliate of A&K Railroad Material, Inc. over

the past 10 years, and indicate (1) how many of the acquired lines of rail are currently operated in common carrier service, either by Defendant or another railroad operator; (2) how many of the lines were abandoned by Defendant or an affiliate pursuant to 49 U.S.C. §10903 and the applicable regulations; (3) whether any of the Rail Track Material of the acquired lines of rail were sold and removed subsequent to the acquisition and, if sold and removed, and how much of the assets identified were re-used and how much of the assets were sold for scrap or otherwise disposed of.

11. Please provide a detailed description of all actions that have been taken by Defendant and its affiliate A&K Railroad Material, Inc. associated with the removal of any Rail Track Materials from any segment of the Towner Line, and a complete listing of all Rail Track Materials that have been removed from the Towner Line by Defendant and/or its affiliates since the Towner Line was purchased by Defendant in December, 2005.

DOCUMENT REQUESTS

1. Please produce all documents relating to, discussing, referring to, or commenting on Defendant's purchase of the Towner Line in 2005.

2. Please produce all documents relating to, discussing, referring to, or commenting on that Defendant utilized, and/or relied upon for establishing the valuation of the Towner Line when the Defendant purchased it in 2005.

3. Please provide all documents relating to, discussing, referring to, or commenting on the Acquisition Petition, both before and after it was filed.

4. Please provide all documents relating to, discussing, referring to, or commenting on the decision to seek discontinuance authority from the STB for the Western Segment.

5. Please provide all documents relating to, discussing, referring to, or commenting on Defendant's plans, and actions taken, to abandon:

- a. The Western segment;
- b. The Eastern segment; and
- c. The Middle segment.

6. Please provide all documents comprising, relating to, responding to, discussing, or referring to any requests by a rail shipper for rail service from Defendant over any portion of the Towner Line between December 1, 2005 to date, including any and all communications from prospective, current and former shippers, quotes of transportation rates and any and all discussions relating to providing rail transportation service over the Towner Line. Such information to include, but not be limited to:

- a. All requests for rates and service terms
- b. All internal discussions of Defendant about how to respond to such requests;
- c. Summaries of commodities and volumes transported by Defendant over the Towner Line as a result of such requests.

7. Please provide all documents relating to, discussing, referring to, or commenting on the letter of counsel of Kiowa County, Colorado to Defendant, sent on August 22, 2014, requesting that Defendant cease and desist the removal of Rail Track Material from the Towner Line.

8. Please provide all documents relating to, discussing, referring to, or commenting on the potential or actual sale of the Rail Track Material of the Towner Line to A&K Railroad Material, Inc. or any other purchaser.

9. Please provide all documents relating to, discussing, referring to, or commenting on dismantling and removing of any Rail Track Material of the Towner Line.

10. Please provide all documents relating to, discussing, referring to, or commenting on:

- a. 0.9 miles of the Towner Line from MP 868.5 to MP 869.4; and
- b. 2 miles of the Towner Line between MP 749.5 and the eastern terminus at MP 747.5.

11. Please provide all documents relating to, discussing, referring to, or commenting on any valuation prepared for the Towner Line and its Rail Track Material, including any valuation of the underlying land and track assets.

12. Please provide all documents relating to, discussing, referring to, or commenting on the "contractual obligation of July 16, 2014" between A&K Railroad Material, Inc. and OmniTRAX, Inc., referenced on page 5 of Defendants Reply filed in this proceeding on October 30, 2014, including but not limited to, all correspondence between A&K Railroad Material, Inc. and OmniTRAX, Inc. pertaining to the "contractual obligation," and a copy of the final document evidencing the obligation.

13. Please provide all documents relating to, discussing, referring to, or commenting on KCVN's July 28, 2014 offer to purchase the Towner Line, including but not limited to all documents that discuss Defendant's possible responses to that offer, and its final response.

14. Please provide all documents referring or relating to the August 11, 2014 agreement between A&K Railroad Material, Inc. and Great Western Railway, Inc. referenced at page 5 of Defendants Motion to Dissolve Temporary Restraining Order, filed in Civil Action No. 1:14-cv-02450-CBS in the U.S. District Court for the District of Colorado; including but not limited to the following:

- a. All drafts of the agreement and the final executed agreement;
- b. All documents that demonstrate how and when A&K Railroad Material, Inc. acquired ownership of, or a sufficient interest in, the "tracks and asso-

ciated equipment" of the Western Segment from Defendant such that A&K Railroad Material, Inc. could enter into a contract with a third party for their sale;

- c. All correspondence between Defendant and Great Western Railway, Inc., concerning the August 11, 2014 contract;
- d. All correspondence between A&K Railroad Material, Inc. and Great Western Railway, Inc., concerning the August 11, 2014 contract.

15. Please provide all documents, including but not limited to all email and other correspondence, between Defendant and Great Western Railway; and between A&K Railroad Material, Inc. and Great Western Railway discussing, referring to, or relating to:

- a. any segment of the Towner Line, and
- b. Defendant's plans concerning ownership and operation of any segment of the Towner Line

16. Please provide all documents supporting the answers provided to Written Interrogatories 1-11.

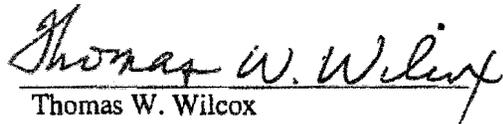
Respectfully submitted,



Terry Whiteside, Registered Practitioner
Whiteside & Associates
3203 Third Avenue North, Suite 301
Billings, MT 59101

(406) 245-5132

Email: twhiteside@wtp.net



Thomas W. Wilcox
Svetlana V. Lyubchenko
GKG Law, P.C.
1054 31st Street, N.W., Suite 200
Washington, DC 20007

(202) 342-5248

Email: twilcox@gkglaw.com

Attorneys for KCVN

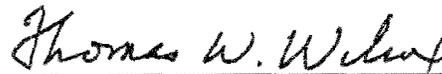
CERTIFICATE OF SERVICE

I do hereby certify that on this 21st day of November, 2014, I have served a copy of the foregoing Complainants' First Discovery Requests on counsel for Defendant by first class mail to:

Gregory E. Goldberg
Sean M. Hanlon
Holland & Hart LLP
Post Office Box 8749
Denver, CO 80201-8749
Tel. (303) 295-8270

and by email and hand-delivery to:

Fritz Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152



Thomas W. Wilcox

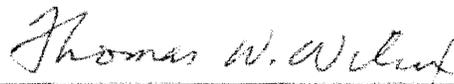
CERTIFICATE OF SERVICE

I do hereby certify that on this 16th day of December 2014, I have served a copy of the foregoing Complainants' Motion to Compel Discovery on counsel for Defendant by first class mail to:

Gregory E. Goldberg
Sean M. Hanlon
Holland & Hart LLP
Post Office Box 8749
Denver, CO 80201-8749
Tel. (303) 295-8270

and by email and hand-delivery to:

Fritz Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152



Thomas W. Wilcox

237378

SURFACE TRANSPORTATION BOARD

—————
Docket No. NOR 42140

COLORADO WHEAT ADMINISTRATIVE COMMITTEE,
COLORADO ASSOCIATION OF WHEAT GROWER,
COLORADO WHEAT RESEARCH FOUNDATION
AND KCVN, LLC

ENTERED
Office of Proceedings
January 2, 2015
Part of
Public Record

v.

V AND S RAILWAY, LLC

—————
REPLY
OF
V AND S RAILWAY, LLC

V and S Railway, LLC ("V&S"), pursuant to 49 C.F.R. § 1104.13(a), replies to Complainant's Motion to Compel Discovery, filed December 16, 2015, as follows:

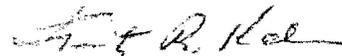
The Motion to Compel Discovery has been mooted, as V&S responded on December 31, 2014.

V&S, by its attorney, certifies that a copy of this Reply has been served this day on each party of record by e-mail or prepaid first-class mail.

Respectfully submitted,

V AND S RAILWAY, llc

By its attorney



Fritz R. Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152

Dated: January 2, 1015

LAW OFFICES
FRITZ R. KAHN, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036

Tel.: (202) 263-4152 Fax: (202) 331-8330 E-mail: xiccgc@gmail.com

December 31, 2014

Mr. Terry Whiteside
3203 Third Avenue North (#301)
Billings, MT 59101

Thomas W. Wilcox, Esq.
GKG Law, P.C.
1054 31st St., NW (#200)
Washington, DC 20007

Re: Docket No. NOR 42140

Terry, Tom:

Enclosed is the response of V and S Railway, LLC to the Complainants' First Discovery Requests.

I apologize, Tom, that I was unable to email a copy to you, but there were some last minute changes that I needed to make, and it would have taken too long to run the response through the PDF machine.

Best wishes for a happy and healthy 2015.

Sincerely yours,


Fritz R. Kahn

REQUESTS FOR ADMISSION

1. Please admit that by the time KCVN submitted its offer to purchase the Towner Line on July 28, 2014, Defendant and/or its affiliate, A&K Railroad Material, Inc. had already been having discussions with third parties about selling the Rail Track Material making up the Towner Line. **Admitted.**

2. Please admit that between the time KCVN submitted its offer to purchase the Towner Line on July 28, 2014 and the end of August, at the earliest, Defendant and/or its affiliate, A&K Railroad Material, Inc. had already been engaged in activities to prepare the rail line for dismantlement, including but not limited to, removing spikes and/or tie plates and other activities from the rail track making up the Towner Line. **Deny that any rail was removed; admit some tie plates and spikes were removed.**

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WRITTEN INTERROGATORIES

1. Please identify all persons who participated in any and all discussions, negotiations, or decision-making regarding selling the Rail Track Material of any portion of the Towner Line. **Kern Schumacher, Rhonda Nicoloff, Beth Wyatt, Doug Davis.**

2. Please provide the names of any third party consultant that Defendant has retained to conduct any valuation of the Towner Line, the underlying land and the Rail Track Material making up the Towner Line. **R. L. Banks & Associates, Inc.**

3. Please identify all persons who have been in contact with Defendant regarding purchasing the Rail Track Material of the Towner Line, whether or not such persons contracted with Defendant to purchase the Rail Track Material. **No one.**

4. Please identify all persons who have contacted Defendant with requests for transportation over the Towner Line in the past three years, including all persons who requested quotes for such transportation. **No one.**

5. Please identify all persons employed by Defendant and/or its affiliates who participated in any and all discussions, negotiations, or decision-making regarding selling the Rail Track Material of the Towner Line. **Kern Schumacher, Rhonda Nicoloff, Beth Wyatt, Doug Davis.**

6. Please describe the corporate relationship between Defendant and A&K Railroad Material, Inc., and the interrelationship between Defendant and A&K Railroad Material, Inc. when it comes to the acquisition, operation, and disposition of common carrier lines of rail. **Defendants' members and managers are Kern Schumacher and Rhonda Nicoloff. Kern Schumacher and Rhonda Nicoloff are stockholders and officers of A&K Railroad Materials, Inc.**

7. Please provide the total amount of Defendant's maintenance expenditures in 2011, 2012, 2013, and 2014 to date, for each segment of the Towner Line, specifically, the Western Segment, the Eastern Segment, the Middle Segment, and the portions of the track on either end that were not included in either the Western or Eastern Segments. **None.**

8. Please provide a description of all actions Defendant took to formally abandon the Western Segment after August 15, 2012, when Defendant informed the STB in the Acquisition Petition that it expected to seek authority to abandon the Western Segment "in the near future." **None.**

9. Please provide the date on which Defendant first discussed selling the Rail Track Material of the Western Segment to any potential purchaser. **None.**

10. Please provide a listing of all acquisitions of common carrier lines of rail by A&K Railroad Material, Inc. Defendant, and any other affiliate of A&K Railroad Material, Inc. over the past 10 years, and indicate (1) how many of the acquired lines of rail are currently operated in common carrier service, either by Defendant or another railroad operator; (2) how many of the lines were abandoned by Defendant or an affiliate pursuant to 49 U.S.C. §10903 and the applicable regulations; (3) whether any of the Rail Track Material of the acquired lines of rail were sold and removed subsequent to the acquisition and, if sold and removed, and how much of the assets identified were re-used and how much of the assets were sold for scrap or otherwise disposed of. **A line of The Hutchinson and Northern Railway Company, Gloster Southern Railroad Company, a line of the Union Pacific Railroad Company renamed Lassen Valley Railroad, a line of the Colorado Department of Transportation, lines of the Illinois Central Railroad Company renamed the Grenada Railway, LLC and the Natchez Railway, LLC. The line of The line of the Hutchinson and Northern Railway Company has been sold. The Lassen Valley Railroad has been abandoned. Service has been discontinued on the Gloster Southern Railroad Company and on the Western Segment of the line acquired from the Colorado Department of Transportation. The remainder of the properties are active rail carriers prepared to respond to reasonable requests of service. Records of the salvaged track materials and their disposition are not maintained by the name of the rail carrier.**

11. Please provide a detailed description of all actions that have been taken by Defendant and its affiliate A&K Railroad Material, Inc. associated with the removal of any Rail Track Materials from any segment of the Towner Line, and a complete listing of all Rail Track Materi-

als that have been removed from the Towner Line by Defendant and/or its affiliates since the Towner Line was purchased by Defendant in December, 2005. **No rail has been removed. Some tie plates and spikes have been removed.**

DOCUMENT REQUESTS

1. Please produce all documents relating to, discussing, referring to, or commenting on Defendant's purchase of the Towner Line in 2005. See **STB Docket No. FD 34779, STB Docket No. FD 35664, the publicly available documents of the Colorado Legislature and Colorado Department of Transportation.**

2. Please produce all documents relating to, discussing, referring to, or commenting on that Defendant utilized, and/or relied upon for establishing the valuation of the Towner Line when the Defendant purchased it in 2005. See **STB Docket No. FD 34779, STB Docket No. FS 35664, the publicly available documents of the Colorado Legislature and Colorado Department of Transportation.**

3. Please provide all documents relating to, discussing, referring to, or commenting on the Acquisition Petition, both before and after it was filed. See **STB Docket No. FD 35664, the publicly available documents of the Colorado Legislature and Colorado Department of Transportation.**

4. Please provide all documents relating to, discussing, referring to, or commenting on the decision to seek discontinuance authority from the STB for the Western Segment. See **STB Docket AB 603 (Sub-No. 2X), the publicly available documents of the Colorado Legislature and Colorado Department of Transportation.**

5. Please provide all documents relating to, discussing, referring to, or commenting on Defendant's plans, and actions taken, to abandon:

- a. The Western segment; **There are none.**
- b. The Eastern segment; and **See STB Docket No. AB 603 (Sub-No. 3X)**
- c. The Middle segment. **See STB Docket No. AB 603 (Sub No. 4X).**

6. Please provide all documents comprising, relating to, responding to, discussing, or referring to any requests by a rail shipper for rail service from Defendant over any portion of the Towner Line between December 1, 2005 to date, including any and all communications from prospective, current and former shippers, quotes of transportation rates and any and all discussions relating to providing rail transportation service over the Towner Line. Such information to include, but not be limited to:

- a. All requests for rates and service terms **There were two shippers on the eastern segment of the Towner Line, Bartlet Grain Company and Temple Grain Company, which requested and received little or no service from Defendant. Information and documents, if any, relating to the two chippers are irrelevant to the current proceeding before the STB, which is limited to the Western Segment, and thus are not subject to production by Defendant.**
- b. All internal discussions of Defendant about how to respond to such requests; **See paragraph a.**
- c. Summaries of commodities and volumes transported by Defendant over the Towner Line as a result of such requests. **See paragraph a.**

7. Please provide all documents relating to, discussing, referring to, or commenting on the letter of counsel of Kiowa County, Colorado to Defendant, sent on August 22, 2014, requesting that Defendant cease and desist the removal of Rail Track Material from the Towner Line. **In an exchange of emails between counsel for Kiowa County and V&S' STB counsel which preceded the letter, V&S' STB counsel expressed his disagreement with the assertion of counsel for Kiowa County that the alleged removal of rails and track materials constitutes an abandonment in violation of 49 U.S.C. 10903 unless authorized by the Board.**

8. Please provide all documents relating to, discussing, referring to, or commenting on the potential or actual sale of the Rail Track Material of the Towner Line to A&K Railroad Material, Inc. or any other purchaser. **See Attachment A.**

9. Please provide all documents relating to, discussing, referring to, or commenting on dismantling and removing of any Rail Track Material of the Towner Line. **There are none.**

10. Please provide all documents relating to, discussing, referring to, or commenting on:

- a. 0.9 miles of the Towner Line from MP 868.5 to MP 869.4; and **See the publicly available documents of the Colorado Legislature and Colorado Department of Transportation.**
- b. 2 miles of the Towner Line between MP 749.5 and the eastern terminus at MP 747.5. **Privileged oral communication between V&S' attorneys and management of V&S.**

11. Please provide all documents relating to, discussing, referring to, or commenting on any valuation prepared for the Towner Line and its Rail Track Material, including any valuation of the underlying land and track assets. **The appraisal of R. L. Banks & Associates, Inc.**

12. Please provide all documents relating to, discussing, referring to, or commenting on the "contractual obligation of July 16, 2014" between A&K Railroad Material, Inc. and OmniTRAX, Inc., referenced on page 5 of Defendants Reply filed in this proceeding on October 30, 2014, including but not limited to, all correspondence between A&K Railroad Material, Inc. and OmniTRAX, Inc. pertaining to the "contractual obligation," and a copy of the final document evidencing the obligation. **See Attachment B.**

13. Please provide all documents relating to, discussing, referring to, or commenting on KCVN's July 28, 2014 offer to purchase the Towner Line, including but not limited to all documents that discuss Defendant's possible responses to that offer, and its final response.

Privileged oral communication between V&S' attorneys and management of V&S.

14. Please provide all documents referring or relating to the August 11, 2014 agreement between A&K Railroad Material, Inc. and Great Western Railway, Inc. referenced at page 5 of Defendants Motion to Dissolve Temporary Restraining Order, filed in Civil Action No. 1:14-cv-02450-CBS in the U.S. District Court for the District of Colorado; including but not limited to the following:

- a. All drafts of the agreement and the final executed agreement; **See Attachment B.**
- b. All documents that demonstrate how and when A&K Railroad Material, Inc. acquired ownership of, or a sufficient interest in, the "tracks and associated equipment" of the Western Segment from Defendant such that A&K Railroad Material, Inc. could enter into a contract with a third party for their sale; **See Attachment B.**
- c. All correspondence between Defendant and Great Western Railway, Inc., concerning the August 11, 2014 contract; **See Attachment B.**

- d. All correspondence between A&K Railroad Material, Inc. and Great Western Railway, Inc., concerning the August 11, 2014 contract. **See Attachment B.**

15. Please provide all documents, including but not limited to all email and other correspondence, between Defendant and Great Western Railway; and between A&K Railroad Material, Inc. and Great Western Railway discussing, referring to, or relating to:

- a. any segment of the Towner Line, and **See Attachment B.**
- b. Defendant's plans concerning ownership and operation of any segment of the Towner Line. **See Attachment B.**

16. Please provide all documents supporting the answers provided to Written Interrogatories 1-11. In response to **Written Interrogatory 10**, see **STB Docket No. FD 34875; STB Docket No. FD 35162; STB Docket No. AB 1051X; STB Docket NO. FD 35306; STB Docket No. AB 1074X; STB Docket No. FD 34779; STB Docket No. FD 35664; STB Docket No. AB 603 (Sub-No. 3X); STB Docket No. AB 603 (Sub-No. 4X);** the publicly available records of the Colorado Legislature and Colorado Department of Transportation; **STB Docket No. FD 35247; STB Docket No. FD 35248.**

The persons who responded to one or another of the Requests for Admission, Written Interrogatories and Document Requests were Kern Schumacher, Rhonda Nicoloff, Beth Wyatt, Aaron Parsons and Doug Davis.

ATTACHMENT A

TRACK MATERIALS SALES AGREEMENT

This Track Materials Sales Agreement ("Agreement") is made and entered into as of August 1, 2014 ("Effective Date"), by and between V&S Railway, LLC, a Nevada limited liability company ("Seller") and A&K Railroad Materials Inc., a California corporation ("Buyer").

RECITALS

- A. Seller owns a 122-mile railroad line located between NA Junction, CO and Towner, CO ("Towner Line").
- B. Seller desires to sell, and Buyer desires purchase, on the terms and conditions of this Agreement, certain railroad track materials described in Exhibit A which are situated between MP 808.3 and MP 868.5 on the Towner Line ("Track Materials").
- C. The purchase price for the Track Materials will include a credit for the Buyer to furnish all the necessary materials, superintendence, labor, tools, equipment and transportation to take up and remove the Track Materials, among other track materials, located between MP 808.3 and MP 868.5 on the Towner Line (collectively, "Take-Up Services").

NOW THEREFORE, the parties agree to the following terms and conditions:

1. Conveyance of Track Materials

Seller hereby conveys to Buyer, on the Effective Date, all of Seller's right, title and interest in the Track Materials. This document shall constitute a bill of sale.

2. Take-Up Services

The Take-Up Services shall be performed in a competent and diligent manner and shall conform to applicable standards of skill and care and any mutually agreed written specifications.

3. Purchase Price

- a. Seller shall sell and Buyer shall purchase the Track Materials for [REDACTED], less the credit for the Take-Up Services specified in Section 3(b) below, totaling [REDACTED], the receipt and sufficiency of which are hereby acknowledged by Seller.

- b. The price for the Take-Up Services shall be ██████████, which will be paid by way of a credit against the purchase price for the Track Materials as provided in Section 3(a) above.

4. Representations and Warranties

- a. Seller hereby represents and warrants to Buyer the following facts as of the Effective Date:

1. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Nevada;
2. Seller has the corporate power and authority to enter into this Agreement and carry out Seller's obligations under this Agreement;
3. The execution and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of the Seller, and no further corporate proceedings of Seller are required;
4. Seller represents that there are no liens or encumbrances against the Track Materials; and
5. No representation or warranty by Seller in this Agreement contains any untrue or materially misleading statement of a material fact, nor omits any material fact that is necessary to make any representation or warranty materially misleading.

- b. Buyer hereby represents and warrants to Buyer the following facts as of the Effective Date:

1. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of California;
2. Buyer has the corporate power and authority to enter into this Agreement and carry out Buyer's obligations under this Agreement;
3. The execution and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of the Buyer, and no further corporate proceedings of Buyer are required;
4. Buyer has carefully inspected the Track Materials and accepts the same in their present condition; and
5. No representation or warranty by Buyer in this agreement contains any untrue or materially misleading statement of a material fact, nor omits any material fact that is

necessary to make any representation or warranty not materially misleading.

5. Entire Agreement

This Agreement constitutes the entire agreement between Seller and Buyer relating to this transaction, and any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein.

6. Notices

All notices and other communications under this agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, return receipt requested, or by overnight delivery service, postage prepaid, or, if sent by national overnight service when received by the carrier service in a prepaid mailer, addressed as follows:

Seller: V&S RAILWAY, LLC
PO BOX 30076
SALT LAKE CITY, UT 84126
ATTN: Doug Davis

Buyer: A&K RAILROAD MATERIALS, INC.
PO BOX 30076
SALT LAKE CITY, UT 84130-0076
ATTN: Rhonda Nicoloff

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Agreement as of the Effective Date.

V&S RAILWAY, LLC

A&K RAILROAD MATERIALS, INC.

By: Doug Davis

By: Rhonda Nicoloff

Title: General Counsel

Title: President

Exhibit A
Track Materials

1. 5385 Ton Relay 136 RE continuous welded rail in average 1600' strings. This quantity is based on three (3) trains.
2. 76,106 Each Relay 6" base 8x14 Double Shoulder Tie Plates.

ATTACHMENT B



P.O. Box 30076 Salt Lake City, Utah 84130-0076 P 801.974.5484 F 801.973.7393 www.akrailroad.com

August 11, 2014

David Carman
Director of Procurement and Asset Planning
OmniTRAX Inc.
252 Clayton Street, Fourth Floor
Denver, Colorado 80206

Re: Sale and Purchase of Railroad Track Materials

Dear David:

This letter agreement ("Agreement"), when executed by authorized representatives of A&K Railroad Materials, Inc. ("A&K"), Nebraska, Kansas & Colorado Railway, LLC ("NKCR") and Great Western Railway of Colorado, LLC ("GWR") will confirm the agreement of A&K to sell and GWR to purchase the railroad track materials described in Exhibit A ("A&K Materials") for the prices specified therein, including a credit for:

- i. NKCR's sale to A&K of the track materials specified in Exhibit B ("NKCR Materials") removed from NKCR's railroad line between MP 47.25 near Reager, KS and MP 78.10 near Oberlin, KS ("Oberlin Line") and its railroad line between MP 17.00 near Long Island, KS and MP 29.85 near Almena, KS ("Almena Line"); and
- ii. GWR's sale to A&K of the track materials specified in Exhibit C ("GWR Materials") removed from GWR's railroad line between MP 86.3 near Windsor, CO and MP 98.8 near Greely, CO ("Windsor Line").

The terms and conditions of the Agreement are as follows:

1. Capacity of OmniTRAX Parties. NKCR and GWR (collectively, "OmniTRAX Parties") will each have direct rights and obligations under this Agreement. Without limitation to the foregoing, neither OmniTRAX Party will have any obligation to perform on behalf of the other OmniTRAX Party under this Agreement.
2. Precedence. If there is any conflict, inconsistency or ambiguity between this Agreement, on the one hand, and any terms and conditions contained or referenced in or attached to any purchase order, sales order, quotation, invoice, order acknowledgement, confirmation, acceptance, bill of lading or other instrument, on the other hand, this Agreement will prevail and govern to the extent of such conflict, inconsistency or ambiguity.

3. Price. Subject to the credits specified in Section 13, A&K shall sell and GWR shall purchase the A&K Materials for the prices specified in Exhibit A, exclusive of taxes as provided in Section 4. The payment schedule is set out in Section 14.
4. Taxes. The purchase price for the A&K Materials is exclusive of any sales, use or consumption taxes or similar government taxes payable on the sale of the A&K Materials, all of which shall be for the account of GWR, who shall promptly pay the amount of such taxes to A&K upon demand.
5. Loading, Delivery and Unloading.
 - (a) At A&K's sole cost and expense (except as provided below in Sections 5(c) and 5(d)), A&K will load the A&K Materials at their place of origin, and will deliver the A&K Materials to GWR and unload them in three (3) trains, beginning at GWR's Interchange Station at Loveland, CO.
 - (b) The first train of the A&K Materials will be loaded after August 18, 2014 and before September 10, 2014 with the same train to be used for all three deliveries.
 - (c) A&K will use commercially reasonable good faith efforts to unload each train of the A&K Materials within three (3) days after delivery. However, if, due to circumstances beyond the reasonable control or fault of A&K, unloading of the A&K Materials lasts longer than three (3) days, an unloading charge of \$3,500.00 per additional day will apply.
 - (d) At GWR's sole cost and expense, GWR will provide (i) locomotive(s) for each train of the A&K Materials, (ii) a sufficient crew (including a supervisor) to coordinate and direct the unloading of each train of the A&K Materials, (iv) ground personnel to remove bars, and (v) a hi-rail vehicle.
6. Risk of Loss and Title to A&K Materials.
 - (a) All risk of loss of or damage to the A&K Materials shall pass to GWR upon the delivery of the A&K Materials to GWR, and A&K shall not be responsible for any loss of or damage to the A&K Materials thereafter.
 - (b) Title to the A&K Materials shall not pass to GWR, and A&K shall have a security interest in the A&K Materials, until payment for the A&K Materials is made in full pursuant to Section 14.
7. Inspection and Condition of A&K Materials.
 - (a) GWR acknowledges that (i) prior to the execution and delivery of this Agreement, GWR has been given the opportunity to inspect the A&K materials at their place of origin, (ii) GWR has found the A&K materials to

be in satisfactory condition and suitable for its purposes, and (iii) the A&K Materials are of a size, design, capacity selected by GWR.

- (b) Rail will average 1/8" topwear and 1/8" average curvewear. Rail is subject to inspection and approval by GWR prior to loading. If, prior to loading, GWR believes that a section of rail fails to meet the standard specified in this Section 7(b), GWR shall promptly notify A&K, in which case GWR's sole remedy and A&K's sole obligation for such non-conformance shall be limited to A&K, at its sole cost and expense, removing the non-conforming rail and replacing it with rail that meets the standard specified in this Section 7(b).
 - (c) GWR accepts the A&K Materials Assets in their "As Is, Where Is" condition, without warranties of any kind other than the express warranty set forth below in Section 8 hereof, express or implied (including, but not limited to any warranty of merchantability or fitness for a particular purpose), and with all faults (including, but not limited to, both latent and patent defects).
 - (d) GWR assumes sole responsibility to meet all governmental safety and environmental laws and standards in using the A&K Materials.
8. Warranty as to A&K Materials. A&K warrants to GWR that A&K has good and marketable title to the A&K Materials, free and clear of all liens, claims, rights, charges, options, rights of third parties, encumbrances, security interests or other restrictions or limitations of any nature (collectively, "Liens"), and that A&K has the right to transfer title to the A&K Materials to GWR, free and clear of all Liens. A&K makes no warranty, express or implied, as to the A&K Materials other than as expressly provided in this Section 8.
9. Removal and Loading of GWR Materials. GWR will, at its sole cost and expense, remove the GWR Materials from the Windsor Line, place them along the side of the right-of-way, with joint bars removed from rail and within a reasonable time thereafter, notify A&K that the GWR Materials are available for pick-up and loading by A&K. A&K will, at its sole cost and expense, load the GWR Materials for transport by A&K and/or its designated carrier.
10. Removal and Loading of NKCR Materials. NKCR will notify A&K when the NKCR Materials are available for removal from the Oberlin Line and the Almena Line, respectively. Upon receipt of such notice(s), A&K will, at its sole cost and expense, remove the NKCR Materials from their respective Lines and load them for transport by A&K and/or its designated carrier. A&K will remove the NKCR Materials in a good and workmanlike manner.
11. License to Access the Lines. GWR grants a license to A&K to allow A&K ingress and egress to the Windsor Line, NKCR grants a license to A&K to allow A&K ingress and egress to the Oberlin Line and Almena Line, as applicable, including reasonable track time, for the purposes of (i) delivering and unloading the A&K

Materials, (ii) sorting, storing, loading and transporting the Materials, and (iii) removing, sorting, storing, loading and transporting the Materials.

12. Risk of Loss and Title to GWR Materials and NKCR Materials. Risk of loss and title to the GWR Materials and the NKCR Materials will transfer to A&K upon the transfer of the care, custody and control of the same to A&K for loading and transport by A&K and/or its designated carrier. GWR shall convey the GWR Materials and NKCR shall convey the NKCR Materials to A&K free and clear of any Liens.
13. Credit for Sale of NKCR Materials and GWR Materials. The purchase price for the NKCR Materials and the GWR Materials shall be in the form of credits against the purchase price for the A&K Materials (collectively, the "Credits"), as follows:
 - (a) GWR Materials removed from the Windsor Line -- \$274,400.00.
 - (b) NKCR Materials removed from the Oberlin Line -- \$1,546,000.00.
 - (c) NKCR Materials removed from the Almena Line -- \$1,217,000.00.
14. Payment Schedule for A&K Materials. GWR shall make payments for the A&K Materials, with the Credits being applied first, as follows:
 - (a) Ten percent (10%) of the Credits, the receipt of which are hereby acknowledged, upon the execution of this Agreement.
 - (b) Twenty percent (20%) of the Credits upon A&K loading the first train of the A&K Materials at their place of origin.
 - (c) Thirty percent (30%) of the Credits upon A&K completing the delivery and unloading of all three trains of the A&K Materials.
 - (d) Thirty percent (30%) of the Credits upon the earlier to occur of (i) GWR completing the installation of the A&K Materials, or (ii) one hundred twenty (120) days after A&K has completed the delivery and unloading of all three trains of the A&K Materials.
 - (e) Ten percent (10%) of the Credits upon A&K completing the loading of the GWR Materials.
 - (f) The balance of the purchase price for the A&K Materials upon the abandonment of the Oberlin Line and the Almena Line in accordance with Section 15.

15. Abandonments of the Oberlin and Almena Lines.

- (a) With reasonable promptness following the execution of this Agreement, NKCR anticipates that it will file with and seek the approval of the Surface Transportation Board ("STB") for the abandonments of the Oberlin Line and the Almena Line and thereafter to convey to A&K the NKCR Materials by no later than May 15, 2015 ("Completion Date").
- (b) Should the abandonments of the Oberlin and Almena Lines not be approved by the STB by May 1, 2015, then A&K will have the option, at its sole discretion by written notice to GWR, to extend the Completion Date or to require GWR to pay the balance of the purchase price for the A&K Materials as provided in Section 14(f), plus interest at 3% per annum from the date of delivery of the A&K Materials. For the avoidance of doubt, if A&K extends the Completion Date and NKCR conveys the NKCR Materials to A&K post-abandonment of the Oberlin and Almena Lines, no interest will be charged.

16. Section 1031 Tax-Deferred Exchange. GWR agrees to cooperate with A&K in processing this transaction through a Section 1031 tax-deferred exchange and to execute such documents as reasonably may be required to affect the tax-deferred exchange. A&K shall indemnify, defend and hold harmless GWR, its owners, parents and affiliates fully against all reasonable and necessary costs, expenses, and liabilities which GWR, its owners, parents and affiliates may directly incur as a result of cooperating with A&K on such a tax-deferred exchange.

17. Exclusion of Consequential Loss. No party will be liable to any other party under this Agreement for any special, incidental, indirect, consequential, exemplary or punitive damages or losses, loss of profits or revenues, loss of opportunities, loss of goodwill or loss of capital.

18. Indemnification. Subject to Section 17 hereof, each of A&K and the OmniTRAX Parties agrees to indemnify and hold harmless the each other and their respective parent and affiliates, and its/their officers, directors, employees and agents, from and against any claims, losses, damages or injuries of any kind or character (including, without limitation, reasonable attorneys' fees) caused by the indemnifying party's breach of its obligations under this Agreement. The indemnifying party shall have no obligation to indemnify pursuant to this Section 18 if and to the extent that the relevant claim or liability is caused by the indemnified party or a third party not affiliated with the indemnifying party; provided, however, this provision shall not relieve indemnifying party of any pro rata, proportional, contributory or other allocation of liability or fault imposed by applicable laws.

19. Termination. Either A&K or any OmniTRAX Party may terminate this Agreement by written notice to the other party in the event of a material breach by

the other party that is not cured within thirty (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.

20. Governing Law and Forum. This Agreement is governed by the laws of the State of Utah, excluding its choice or conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and/or State courts in the state of Utah and the courts of appeal from them for determining any dispute concerning this Agreement.

21. Miscellaneous.

- (a) Neither A&K nor any OmniTRAX Party shall assign or transfer this Agreement, without the other party's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.
- (b) This Agreement (including Exhibits A, B and C hereto) constitutes the entire agreement relating to the subject matter hereof and supersedes all prior and contemporaneous understandings or statements unless expressly contained herein.
- (c) No modification or alteration of the terms hereof shall be binding unless such modification or alteration is in writing and signed by both parties.
- (d) A party's waiver of any breach, or failure to enforce any of the terms and conditions hereof, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

20. Counterpart Execution. The parties' respective authorized representatives have executed duplicate copies of this Agreement as of the date first above written.

[Signatures appear on next page]

A&K Railroad Materials, Inc.

By: *Lyndon Wilcoff*
Title: President

Nebraska, Kansas & Colorado Railway, LLC

By: _____
Title: CFO

Great Western Railway of Colorado, LLC

By: _____
Title: CFO

Exhibit A

A&K Materials and Prices

1. 5385 Ton Relay 136 RE continuous welded rail in average 1600' strings at \$855.00 NT. This quantity is based on three (3) trains.
2. 76,106 Each Relay 6" base 8x14 Double Shoulder Tie Plates at [REDACTED] each.

TOTAL: \$5,509,144.55

**Exhibit B
NKCR Materials**

All rail, ties, ties plates, joint bars, anchors, turnouts, switches and OTM on the Oberlin Line.

Exhibit C
GWR Materials

All rail and all other steel track materials on the Windsor Line.



Great Western Railway of Colorado, LLC
950 Taylor Avenue
LOVELAND CO 80538
UNITED STATES OF AMERICA

Page 1 of 1
07/11/2014
10:18:02

PURCHASE ORDER

| | |
|--|---|
| Billing Address Great Western Railway of PO Box 460669 Glendale CO 80246 USA | Information Document Number 4500117742 Date 07/11/2014 Vendor No. 106022 Currency USD Payment Terms Buyer Robert Guinan Phone 303 398-4538 Fax 866 831-1186 Email rguinan@ommitrax.com Delivery/Promise Date 08/01/2014 Inco Terms FOB Description Free on board Inco Terms(Part 2) Origin |
| Supplier Address A&K RAILROAD MATERIALS PO BOX 30076 SALT LAKE CITY UT 84130 UNITED STATES OF AMERICA Phone 80197454840000 | |
| Shipping Address Great Western Railway of Colorado, LLC 950 Taylor Avenue LOVELAND CO 80538 UNITED STATES OF AMERICA | |

| Item | Material/Description | Quantity | UM | Net Price | Net Amount |
|---------------------|---------------------------------|-----------|-----|-----------|-----------------|
| 10 | 200983 TIE PLATES 6" BASE | 69,565.00 | EA | 9.50 | 660,867.50 |
| 20 | 201557 136#RE relay rail-CWR | 5,385.00 | TON | 855.00 | 4,604,175.00 |
| Net Value | | | | | 5,265,042.50 |
| Tax | | | | | 152,686.24 |
| Total Amount | | | | | \$ 5,417,728.74 |



Great Western Railway of Colorado, LLC
Taylor Avenue
Loveland CO 80538
UNITED STATES OF AMERICA

Page 2 of 2
07/16/2014

PURCHASE ORDER

| |
|--|
| Billing Address GREAT WEST RAILWAY OF CO PO Box 460669 Glendale CO 80246 USA |
| Supplier Address A&K RAILROAD MATERIALS PO BOX 30076 SALT LAKE CITY UT 84130 UNITED STATES OF AMERICA Phone 80197454840000 |
| Shipping Address Great Western Railway of Colorado, LLC 950 Taylor Avenue LOVELAND CO 80538 UNITED STATES OF AMERICA |

| | |
|------------------------------|----------------------|
| Information | |
| Document Number | 4500117742 |
| Date | 07/11/2014 |
| Vendor No. | 106022 |
| Currency | USD |
| Payment Terms | |
| Buyer | Robert Guinan |
| Phone | 303 398-4538 |
| Fax | 866 831-1186 |
| Email | rguinan@omnitrax.com |
| Delivery/Promise Date | 08/01/2014 |
| Inco Terms | FOB |
| Description | Free on board |
| Inco Terms (Part 2) | Origin |

| Item | Material/Description | Quantity | UM | Net Price | Net Amount |
|------|----------------------|----------|----|---------------------|-----------------|
| | | | | Total Amount | \$ 5,442,841.71 |

By accepting this Purchase Order, Seller agrees that this Purchase Order shall be subject to the provisions of the Purchase Order Terms and Conditions of Purchase executed by Seller.

By: _____ Date: _____

Quotation

Page 1 of 3



Quotation No: QS-14-08532-5
Date Quoted: 7/18/2014
Your Reference:
Customer Acct No: 002574

Phone: (800)527-5276 Fax: (913)631-1279 Email: bwystt@akrailroad.com

Buyer: OMNI-TRAX, INC.*
PO Box 460689
Glendale, CO 80246 0689
US

Ship To: OMNI-TRAX, INC.*
950 TAYLOR AVE.

Loveland, CO 80539

Requested By: ROBERT GUINAN
E-mail: rguinan@omnitrax.com

Phone: 303-398-4538
Fax: 866-831-1188

Cell Phone:

We thank you for your inquiry and are pleased to quote as follows:

| Quantity | Unit | DESCRIPTION | Unit Price | Price | Ship Via |
|----------|------|--|------------|--------------|------------|
| 5,385.60 | NT | RAIL RELAY 138 RE #1 GRADE AVERAGE WELDED RAIL | 855.00 | 4,604,888.00 | Rail Train |

(ALTERNATE PRICING: \$19.38/LF, \$31,044.12/1600')

PAYMENT/CREDIT TERMS FOR RAIL:

-Credit for Sale of NKCR Materials and GWR Materials. The purchase price for the NKCR Materials and the GWR Materials shall be in the form of credits against the purchase price for the A&K Materials (collectively, the "Credits"), as follows:

- (a)GWR Materials removed from the Windsor Line -- \$274,400.00.
- (b)NKCR Materials removed from the Oberlin Line -- \$1,546,000.00.
- (c)NKCR Materials removed from the Almena Line -- \$1,217,000.00.

Refer to contract that outlines the details of the transfer of NKC abandonments.

-Payment Schedule for A&K Materials. OmniTRAX shall make payments for the A&K Materials, with the Credits being applied first, as follows:

- (e)Ten percent (10%) of the Credits, the receipt of which are hereby acknowledged, upon the execution of this Agreement. - \$156,728.80
- (f)Twenty percent (20%) of the Credits upon A&K loading the first train of the A&K Materials at their place of origin. - \$313,457.60
- (g)Thirty percent (30%) of the Credits upon A&K completing the delivery and unloading of all three trains of the A&K Materials. - \$470,188.40
- (d)Thirty percent (30%) of the Credits upon the earlier to occur of (i) OmniTRAX completing the installation of the A&K Materials, or (ii) one hundred twenty (120) days after A&K has completed the delivery and unloading of all three trains of the A&K Materials. - \$470,188.40
- (e)Ten percent (10%) of the Credits upon A&K completing the loading of the GWR Materials. - \$156,728.80

| | | | | | |
|-----------|----|--|------|------------|-----|
| 69,565.00 | EA | PLATES RELAY 6 DS 8X14 8 HOLE 5/8 1:40 | 9.50 | 660,867.50 | GON |
|-----------|----|--|------|------------|-----|

~~Sales tax not included in quote. At time of order, sales tax will be charged in accordance with state and local tax laws.~~

Prices in material/transportation shall be subject to change without notice

CONDITIONS: All material quoted is to the conditions on the reverse side or attached sheet. All material quoted is subject to prior sale. Due to drastic variances in fuel prices we reserve the right to re-quote & adjust freight rates at time of shipment as necessary.

TERMS
SHIPMENT
F.O.B.

Special Terms - see Memo
All in stock unless noted
Destination Loveland CO 80539

QUOTED BY _____

Beth Wyatt
Vice President Central Region

The opportunity of quoting is appreciated and we hope that we may be favored with your order
Visit our Website at www.AKrailroad.com

Quotation

**A&K Railroad
Materials, Inc.**
2134 South 74th Street
Kansas City, KS 66108

Quotation No: QS-14-08532-5
Date Quoted: 7/18/2014
Your Reference:
Customer Acct No: 002574

Phone: (800)527-5278 Fax: (913)631-1279 Email: bwyatt@akrailroad.com

Buyer: OMNI-TRAX, INC.*
PO Box 480689
Glendale, CO 80248 0689
US

Ship To: OMNI-TRAX, INC.*
850 TAYLOR AVE.

Loveland, CO 80539

Requested By: ROBERT GUINAN
E-mail: rguinan@omnitrax.com

Phone: 303-398-4538
Fax: 866-831-1188

Cell Phone:

We thank you for your inquiry and are pleased to quote as follows:

| Quantity | Unit | DESCRIPTION | Unit Price | Price | Ship Via |
|----------|------|-------------|------------|-------|----------|
|----------|------|-------------|------------|-------|----------|

PAYMENT TERMS FOR PLATES IS NET 30

| | | | | |
|---------------|----------------|-----------------|-----------|--------------|
| Sales Balance | Total Discount | Freight Charges | Sales Tax | Total |
| 5,285,555.50 | 0.00 | 0.00 | 0.00 | 5,285,555.50 |

USD

Sales tax not included in quote. At time of order, sales tax will be charged in accordance with state and local tax laws.

Prices in material/transportation shall be subject to change without notice

CONDITIONS: All material quoted is to the conditions on the reverse side or attached sheet. All material quoted is subject to prior sale. Due to drastic variances in fuel prices we reserve the right to re-quote & adjust freight rates at time of shipment as necessary.

TERMS
SHIPMENT
F.O.B.

Special Terms - see Memo
All in stock unless noted
Destination Loveland CO 80539

QUOTED BY _____

Beth Wyatt
Vice President Central Region

The opportunity of quoting is appreciated and we hope that we may be favored with your order
Visit our Website at www.AKrailroad.com

PRICES— All prices herein quoted or proposed, shall be adjusted to the Seller's prices in effect at the time of shipment.

TAXES — Any taxes which the Seller may be required to pay or collect, under any existing or future law, upon or herein with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the material covered hereby, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to the Seller upon demand.

PAYMENT - Buyer agrees to pay the Net Amount set forth on the face of this Agreement.

If transportation charges from point of origin of the shipment to a designated point are included in the prices herein named or heretofore quoted—

- (a) any changes in such transportation charge shall be for the account of the Buyer;
- (b) except as otherwise stated in the Seller's quotation, the Seller shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation or accessorial service, nor for any charges incurred therefore, unless such charges are included in the applicable tariff freight rate from shipping point to the designated point.

RISK OF LOSS — Buyer assumes risk of loss or damage upon delivery of the material by the carrier.

INSPECTION — The Buyer may inspect, or provide for inspection, at the place of origin. Such inspection shall be so conducted as not to interfere unreasonably with the suppliers operations, and consequent approval or rejection shall be made, before shipment of the material. Notwithstanding the foregoing, if upon receipt of such material by the Buyer, the same shall appear not to conform to the contract between the Buyer and the Seller, the Buyer shall immediately notify the Seller of such condition and afford the Seller a reasonable opportunity to inspect the material. No material shall be returned without the Seller's consent.

PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES — Except in the particulars specified by Buyer and expressly agreed to in writing by Seller, all materials shall be produced to meet an exact specification, shall be subject to tolerances and variations consistent with usages of the trade and regular mill practices concerning; dimensions, weight, straightness, section, composition and , mechanical properties, normal variations in surface, internal conditions, and quality; deviations from tolerances and variations consistent with practical testing and inspection methods; and regular mill practices concerning over and under shipments.

All materials sold in units measured by weight will be invoiced on theoretical weight unless otherwise stated on the reverse side.

Seller shall not be liable for delays due to strikes, fires, floods, accidents, delays in transportation, shortages of cars, governmental regulations or any other cause beyond our control.

Shortages of 1,000 pounds or more in gross or tare weight must be reported immediately. In the event this contract is not completed on or before agreed expiration date, the contract will remain in full force and effect until completed, unless specifically cancelled in writing.

CREDIT APPROVAL — Shipments, deliveries and performance of work shall at all times be subject to the approval of the Seller's Credit Division. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to such Division.

TERMS OF PAYMENT — Subject to the provisions of CREDIT approval, above, terms of payment are as shown on the reverse side hereof and shall be effective from date of invoice.
