

- 1. DEFINITIONS.** "Purchase Order" or "Order" includes both sides of both this Addendum of Terms and Conditions and the enclosed purchase order. "Buyer" means the corporate subsidiary or affiliate of Norfolk Southern Corporation shown on the face of the enclosed purchase order and may include, without limitation, a subsidiary or affiliate of any corporation owned directly or indirectly, wholly or partially by Norfolk Southern Corporation. If no subsidiary or affiliate is named on the face hereof, "Buyer" shall mean Norfolk Southern Corporation ("Norfolk Southern") acting either for itself or as agent as described in Section 22. "Seller" means the party so named on the face of the enclosed purchase order. "Contract" means the legal relationship created by this Order and Seller's related words and acts.
- 2. GOVERNING LAW AND AGREEMENT.** This Order incorporates all rights which would be granted a buyer under the provisions of the Uniform Commercial Code in the absence of an express agreement altering or relinquishing such rights. This Order expressly limits acceptance terms to such provisions. Buyer's acceptance of goods or sales acknowledgment or confirmation forms shall not constitute agreement to alter or relinquish any such rights under the Uniform Commercial Code, regardless of whether any agreement to relinquish such rights is permissible. By its acceptance of this Purchase Order and/or by shipping the goods and/or providing the services described herein, Seller agrees to all other terms, conditions and special instructions contained in this Purchase Order and agrees that any different or additional provisions, terms, conditions or special instructions which may be contained in Seller's acceptance, proposal, acknowledgment, invoice or other form of Seller shall not be a part of the Contract unless specifically agreed to in writing signed by an authorized representative of Buyer notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer.
- 3. RECOUPMENT AND SETOFF.** Buyer and Seller acknowledge and agree that Buyer's Monetary Obligations to Seller under the Purchase Order shall at all times be net of all Transportation Service Charges, Refund Credits, Return Costs, Defense Obligations, Indemnity and Contribution Obligations and other monetary obligations owing by Seller to Buyer under any Vendor Agreement, Purchase Order, Sales Order, Transportation Contract or otherwise (collectively, "Seller's Monetary Obligations") and any payment, installment payment or advance made by Buyer to Seller in respect of any Vendor Agreement or Purchase Order while any Seller's Monetary Obligations are outstanding shall be deemed to be an overpayment to Seller to the extent of such outstanding Seller's Monetary Obligations and shall be subject to recoupment and/or setoff by Buyer. Without limiting the foregoing, Buyer shall have the right, at all times, to deduct any Seller's Monetary Obligations from any amounts owed to Seller by Buyer, and to pay only the net sum due, if any. Any Seller's Monetary Obligation that remains outstanding after any exercise by Buyer of its recoupment and/or setoff rights shall be paid by Seller promptly upon demand by Buyer.
- 4. NORFOLK SOUTHERN PURCHASE CONTRACT.** If this Purchase Order covers any item which is the subject of a contract between Seller, on the one hand, and Norfolk Southern or Buyer, on the other, all terms and conditions of the contract will survive and in the case of any inconsistency, the terms and conditions of that contract shall supersede any inconsistent terms and conditions of this Order. Buyer and Norfolk Southern shall be jointly and severally liable for all of the obligations of Norfolk Southern under that contract with respect to any item included in this Purchase Order.
- 5. PRICE.** Price(s) in this Order are not subject to escalation, unless (i) Seller's quotation or acknowledgment form states otherwise, (ii) Seller gives Buyer written notice of a final price escalation prior to 30 days before shipment, and (iii) Buyer expressly agrees in writing to the amount of the final price escalation. Unless Buyer agrees to the amount specified in the final escalation the parties intend and agree that Buyer shall not be bound to the contract for sale which is the subject of this Purchase Order. Buyer will advise Seller of its acceptance or rejection within 10 days after receipt of a final price escalation quote. Should the market price decline prior to the time of shipment, the price hereunder shall be reduced accordingly. Buyer will be given the same prices under the same conditions as offered by Seller to any other buyer. It is further agreed that in verifying any price increases based on Seller's increased costs, Seller will provide Buyer access to whatever books, records, invoices, labor agreements, etc., may be reasonably requested to confirm the increased costs. Such access will be at any reasonable time and place and shall include any reasonably requested space and personal assistance in Seller's office.
- 6. ASSIGNMENT.** Seller shall not, without the prior written agreement of Buyer, assign any of its rights or obligations hereunder, except that Seller may assign, without Buyer's consent, only Seller's right to receive the payment of money due hereunder. Seller expressly agrees, however, that (i) any assignments of rights without Buyer's consent other than the right to receive money due hereunder shall be void, (ii) the rights of assignee, whether granted with or without Buyer's consent, shall be subject to all rights, setoffs and defenses that Buyer may have against Seller, and (iii) in the event of any future negotiation arising from or in any way in connection with the subject of this Order, and regardless of whether such negotiation concerns a dispute or controversy, Buyer shall be under no duty to deal with any person other than Seller.
- 7. DELIVERY DATES.** Delivery date(s) shown as the "Date Needed" on this Order is (are) firm and, except as may be expressly stated on the face of this Order, are not subject to any contingencies involving Seller's operations or suppliers or otherwise. Unless expressly stated on this Order or otherwise stated to you in writing by an authorized representative of Buyer, time is of the essence of this Contract, and Buyer shall have the right to cancel this Order or any part thereof for either delay or attempted early delivery. Seller agrees to notify Buyer immediately if Seller obtains knowledge of any facts from which it could reasonably conclude that the delivery schedule could not or would not be met.
- 8. RISK OF LOSS IN TRANSIT.** Seller shall bear all risks of loss in transit.
- 9. BILLING.** (a) Seller shall forward an invoice directly to Buyer's Accounts Payable, 110 Franklin Road, Roanoke, Virginia 24042-0032. Buyer shall not be under any obligation to pay an invoice or bill of lading which does not contain an order number or is not accompanied by a letter giving the authority for shipment. Unless specifically agreed to in writing, Buyer shall not be responsible for any additional charges of any kind including, without limitation, charges for boxing, packaging, cartage, or other such extras.
(b) On all invoices, Seller shall bill separately for all applicable Federal manufacturers' and retailers' excise taxes, but shall not bill for state, county, or municipal sales or use taxes unless the purchase is designated "Taxable" on the face of the Purchase Order. If the purchase is designated "Exempt", Buyer will furnish Seller, upon request, with appropriate exemption certificate or direct pay permit authorizing purchase without payment of such sales or use taxes.
- 10. INSPECTION AND RETURN.** Buyer shall have all rights of inspection, rejection, and return provided by the Uniform Commercial Code. The parties intend that Buyer shall not be required to pay for any goods until it has inspected and accepted them and that the right of inspection be a necessary precondition for the existence of this Contract. Without regard to risk of loss, title to the goods shown on the Order shall not vest, in Buyer until the goods have been both inspected and accepted. In the event of a proper rejection, Seller acknowledges that Buyer's incidental damages shall include, without limitation, transportation charges both ways on rejected material. Seller shall bear risk of loss of any rejected material held by Buyer more than 15 days pending Seller's disposition orders.
- 11. INDEMNITY.** (a) Seller shall indemnify and hold harmless Buyer, all corporate affiliates and subsidiaries of Norfolk Southern, and all officers, agents, employees, and customers of all such companies from and against any and all liability, demands, claims, losses, costs (including, but not limited to, attorney's fees and, in the case of subparagraph (iii) below, royalty payments), and expenses arising from or in connection with (i) any claims for personal injury (including death) and/or property damage to whomsoever or whatsoever occurring arising in any matter out of any act or omission of Seller, its officers, agents or employees or the presence of Seller, its officers, agents or employees upon or about the property or premises of Buyer unless such liability, demands, claims, losses, costs or expenses arise solely from the negligence of Buyer, its officers, agents or employees; (ii) any claim for personal injury (including death) to any employee, agent or officer of Seller and for property damage to any property of Seller, its officers agents or employees, arising directly or indirectly out of the presence of Seller, its officers, agents or employees, on or about the property of Buyer, regardless of whether such liability arises, in whole or in part, from the negligence of Buyer, its officers, agents or employees; (iii) any claim of infringement or patent rights arising from the use of the articles, materials or designs covered by this Order or any part thereof; and (iv) any fines, penalties or other charge or loss arising from any alleged violation of any statute, code or ordinance or regulation of the United States or of any state, county or municipal government that results in whole or in part, directly or indirectly from the activities of Seller's officers, agents, employees or subcontractors on or about Buyer's premises or from any act or omission of Seller, its officers, agents, employees or subcontractors contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent and regardless of any specification by Buyer without actual knowledge that it would violate any such statute, code, ordinance or regulation.
- 12. PLANS, SPECIFICATIONS, AND TOOLS.** Upon request, Seller shall furnish Buyer with plans, specifications, blueprints or other such drawings for approval prior to manufacture and shipment of ordered items. Seller shall include Buyer's Purchase Order number on such documents or on the letter transmitting them. Any specifications, drawings, models, or technical information, or other information which reasonably could be expected to be commercially proprietary, that Buyer furnishes to Seller in connection with this Purchase Order shall be treated confidentially by Seller, shall be used for no purpose other

than filling this Purchase Order, shall not be copied or reproduced nor given in any form to any other person, and in the case of such information in tangible form, shall be returned to Buyer upon request. Unless otherwise provided on the face hereof, Seller shall supply at no cost to Buyer all tools, dies, patterns, models, gauges, jigs, fixtures and the like necessary to fill this Order. If Buyer pays for or furnishes any such devices they shall be the property of Buyer, may be removed at any time by Buyer, shall be used only in filling orders from Buyer, shall be kept separate from other materials or tools and shall be identified as the property of Buyer. Seller assumes all responsibility for loss or damage to such devices with the exception of normal wear or tear, and agrees to maintain them and keep them in satisfactory working condition at Seller's sole cost and expense.

13. FORCE MAJEURE. Buyer's obligation to receive and Seller's obligation to deliver material specified by this Order shall be subject to fires, strikes or other causes beyond the reasonable control of either the Seller or Buyer.

14. TRADEMARK. Seller shall not use the name or insignia of Norfolk Southern or any of its corporate subsidiaries or affiliates in advertising without written permission

15. AMENDMENT. No term or condition of this Order, including all information shown on the face hereof, may be changed except by a written document executed by an authorized representative of Buyer. In the absence of such a written amendment, Seller will comply strictly with all delivery dates, routings, shipping points, quantities, shipping instructions and other terms and conditions shown on this Order and shall have no right of substituted performance which either increases Buyer's net cost or, in Buyer's opinion, unreasonably delays or interferes with Buyer's program of inventory acquisition or maintenance.

16. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION. Seller agrees to be bound by the equal opportunity clause pertaining to minority groups and women set forth in Section 202 of Executive Order No. 11246 and in 41 C.F.R. Section 60-1.4 and by the Affirmative Action Clauses pertaining to disabled and Vietnam Era Veterans and to handicapped individuals set forth in 41 C.F.R. Sections 60-250.4 and 60-741.4, respectively, insofar as applicable, all of which clauses are hereby incorporated by reference. "Seller acknowledges that it has been hereby notified of the requirement to certify it will not maintain or permit its employees to perform services at segregated facilities by 41 C.F.R. Section 60-1.8 in the form approved by the Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor with respect to maintenance or use of segregated facilities, and agrees to obtain similar certifications from its subcontractors prior to award of any subcontracts in connection with this Purchase Order."

17. MSDS. IN COMPLIANCE WITH THE OSHA HAZARD COMMUNICATION STANDARD (HCS) AT 29 CFR 1910.1200 THE SELLER AGREES TO: (1) FOLLOW ALL REQUIRED CONTAINER LABELING PROCEDURES AS REQUIRED BY OSHA HCS; (2) FURNISH TO EACH SHIPMENT LOCATION ANY REQUIRED MATERIAL SAFETY DATA SHEETS (MSDS) WITH THE INITIAL SHIPMENT OF MATERIALS OR PRODUCTS, ADDITIONAL MSDS MUST BE SENT TO EACH LOCATION WHENEVER AN MSDS IS UPDATED; AND (3) FURNISH AN INITIAL COPY OF EACH MSDS AS DESCRIBED IN SECTION 2 ABOVE TO:

NORFOLK SOUTHERN CORPORATION
ENVIRONMENTAL PROTECTION DEPT ATTN: MSDS
1200 PEACHTREE STREET, NE, BOX 136
ATLANTA, GA 30309

AND

3E COMPANY
ATTN: MSDS
1905 AFTON AVE.
CARLSBAD, CA 92008

18. ARBITRATION. (a) The parties adopt the following arbitration provisions to avoid the problems of litigation or deadlock in the event the parties cannot resolve any dispute between themselves. Any claim, dispute or controversy arising out of or relating to this Contract, the parties' relationship under this Contract, or the breach of this Contract, shall be determined by arbitration by a single arbitrator pursuant to the applicable commercial arbitration rules of the American Arbitration Association in effect at the time the demand for arbitration is filed. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the Arbitrator shall be borne equally by the parties. Unless otherwise agreed by the parties, the location of the arbitration shall be at Norfolk, Virginia. The decision of the arbitrator shall be final and binding. Judgment to enforce the decision or award of the arbitrator may be entered in any court having jurisdiction. The Arbitrator shall not have the power to award attorneys' fees to the prevailing party. The Arbitrator shall not have the power to award pre-judgment interest. (b) Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this Contract to arbitrate, the only issues to be determined shall be the existence of the Contract to arbitrate and the failure of one party to comply with that Contract, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator. (c) Neither party shall institute any legal proceeding against the other to enforce any right hereunder or for breach hereof, except that either party may institute litigation (i) to enforce its rights of arbitration hereunder (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this Section 18. (d) If any dispute between the parties arises from or in connection with any claim of litigation initiated by any third party (either as claimant, plaintiff, counterclaimant, or defendant/third party plaintiff), then, unless the parties agree otherwise, the resolution of that dispute under the arbitration provisions of this Section may at the option of either party be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with a claim or litigation so initiated by a third party, either party may at any time initiate arbitration under this Section 18 to determine prospective liability between the parties upon facts which are stipulated, admitted solely for the purpose of arbitrating prospective liability, or not reasonably in dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to mandatory arbitration hereunder upon the demand of either party. In the event Buyer is made a party to such claim or litigation so initiated by a third party, Buyer shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether Buyer is required to, or in fact does, initiate a crossclaim, counterclaim, or third-party claim under subclause (iii) of Subsection (c) above, and regardless of Seller's indemnity obligations.

19. SHIPPING. (a) Seller will enclose a packing memorandum with each shipment and will identify which package contains it when more than one package is shipped. Unless otherwise specified on the face of this Order, Seller will mail to Buyer on the day of shipment a shipping notice showing order number, class, item number, date shipped, quantity shipped, and description of material, Seller will also show order number, class, item and condition code on the invoice, bill of lading, packing slip, and shipping container. Seller will include the order number in the description section of the bill of lading and request the carrier to similarly include it on the freight bill. Shipper will identify each item by class and item number in all shipping papers and documents. Shipments to one location will be consolidated as much as reasonably possible. (b) If the instructions for shipping prepaid or collect designated on the face of this Purchase Order are different from the responsibility, as between Buyer and Seller, for the freight charges as also shown thereon, an appropriate adjustment will be made in Seller's invoice. If Seller has or undertakes any responsibility for designating carriers or route for shipments for which Buyer has final responsibility for freight charges, and unless contrary instructions appear on this Order, Seller shall (i) to the extent practical route such shipments via the lines of Norfolk Southern's affiliates and subsidiaries by the authorized junction point nearest origin, and (ii) in all other cases ship by the least expensive manner. Buyer will have the right to recover, by offset, deduction, or otherwise, any difference between actual freight charges and the lowest applicable rate.

20. SEVERABILITY. If any provision of these terms and conditions should become or be found to be invalid or unenforceable, the remaining provisions and parts hereof shall continue to be fully effective and enforceable.

21. COMPONENTS. This Purchase Order is composed of three (3) parts as follows: (1) Order sheet, (2) Norfolk Southern Vendor Freight Routing Instructions and (3) Norfolk Southern Purchase Order Terms and Conditions. No additional documents are a part of this Purchase Order unless the document expressly states that it is intended to be part of this Purchase Order and has been executed by both Buyer and Seller.

22. NORFOLK SOUTHERN AS AGENT. If Norfolk Southern advises Seller at any time that it has issued this Order as agent for one of its corporate subsidiaries or affiliates identified to Seller at the time of that advice (called "Principal"), Norfolk Southern shall have no individual corporate liability hereunder, and Principal shall be the sole party required to perform or entitled to performance hereunder. Notwithstanding such notice of Norfolk Southern's status as agent, Norfolk Southern shall have full authority with regard to this Order, including, without limitation, authority to demand and/or enforce any of Principal's rights hereunder and to perform, as agent, any act required or expected of Principal under or in connection with this Order.