

INDEMNITY AND INSURANCE AGREEMENT **(METAL PRODUCTS)**

THIS INDEMNITY AND INSURANCE AGREEMENT ("Agreement") is made as of _____, 20__ by _____ (the "**Shipper**") in favor of **CANADIAN PACIFIC RAILWAY COMPANY**, and **SOO LINE RAILROAD COMPANY** and **DELAWARE AND HUDSON RAILROAD COMPANY** both doing business as **CANADIAN PACIFIC RAILWAY COMPANY** (individually and collectively referred to in this Agreement as "**CPR**").

RECITALS:

- A. Shipper desires CPR to provide transportation services for metal products to or on behalf of the Shipper.
- B. As a condition of such transportation services Shipper enters into and provides this Agreement to CPR.

AGREEMENT

NOW, THEREFORE, for and in consideration of CPR's services, sufficiency of such consideration being acknowledged, Shipper agrees as follows:

1. This Agreement shall apply to all shipments of metal products for which CPR provides transportation services for or at request of Shipper.
2. Shipper acknowledges and agrees that it has reviewed and understands, and shall comply with, and shall cause its customers and agents to comply with, the requirements, obligations and recommended procedures of the *Association of American Railroads* (the "**AAR Procedures**") with respect to packaging, bracing, blocking, loading, unloading or other movement (collectively, "**loading**") of coiled and other metal products into containers, rail cars, trailers and other equipment, and with all applicable requirements, obligations and procedures set forth or referenced in CPR tariffs and rules.
3. Failure by Shipper to comply with the AAR Procedures and any other applicable CPR requirements or procedures set forth or referenced in CPR tariffs and rules shall constitute negligence on the part of the Shipper.
4. Shipper shall defend, hold harmless and indemnify CPR and its affiliates, and each of their respective officers, directors, shareholders, employees and agents, from any and all damages, payments, claims, liabilities, and losses (including, but not limited to attorneys, consultant and expert fees and expenses) arising from or related to Shipper's or Shipper's agent's negligence in the loading, bracing, blocking and other handling of coiled and other metal products in relation to containers, rail cars, trailers and other equipment for which CPR provides transportation services for or at the request of the Shipper.
5. Shipper shall procure, at its own expense, and maintain until all of its obligations under this Agreement have been fully discharged and performed, commercial general liability insurance with a policy limit of not less than **FIVE MILLION DOLLARS (\$5,000,000.00)** per occurrence for bodily injury, death or damage to or destruction of property, including the loss of use thereof. The policy shall, by its wording or by endorsement:
 - (a) include CPR as additional insured;
 - (b) provide a "cross liability" clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (c) extend to cover the liabilities assumed by the Shipper under this Agreement;
 - (d) shall include waiver of subrogation rights endorsements; and
 - (e) shall specifically cover railway operations.
6. Any insurance coverage acquired in connection with this Agreement shall in no manner restrict or limit the liabilities assumed by the Shipper under this Agreement. The insurance acquired in connection with this Agreement shall be maintained continuously during the term of this Agreement. The policies shall contain an endorsement that provides that CPR shall be given not less than thirty (30) days notice in writing in advance of cancellation, termination or change of amendments restricting coverage. The Shipper shall provide CPR with certified evidence of the above policies of insurance in a form reasonably acceptable to CPR.
7. In the event that such insurance policies are allowed to lapse during the term of this Agreement, CPR may refuse to provide transportation services to the Shipper until such time as the required insurance is reinstated, and proof of such reinstatement is presented to CPR.
8. This Agreement and the obligations of the Shipper hereunder are in addition to and not in substitution of any other agreement between CPR and the Shipper. In the event of any conflict or inconsistency between this Agreement and any other agreement, this Agreement shall govern. This Agreement is subject to, and shall be construed and enforced in

accordance with, the laws of the State or Province in which the relevant shipment originates (excluding its conflict or choice of law principles where applicable). The delay or failure of CPR party to enforce any provision of this Agreement or to prosecute a default shall not be considered as a continuing or permanent waiver of the provision or bar to prosecution of the default unless so indicated in writing.

9. Shipper shall cause this Agreement, all evidence of insurance and any other documents or notices required under or in relation to this Agreement to be forwarded to CPR at the following address:

Canadian Pacific Railway Company
1290 Central Parkway West
Mississauga, ON L5C 4R3

Facsimile: (905) 803-3300

IN WITNESS WHEREOF, Shipper has caused this Agreement to be executed by its authorized officer on the date shown below.

Dated: _____
SHIPPER

Name: _____

Title: _____

I have authority to bind the Corporation