

## **BULK AGRICULTURE PRODUCTS LETTER OF AGREEMENT**

The following conditions apply to Intermodal International shipments of Bulk Agriculture Products shipped in containers on or via BNSF Railway Company (BNSF) on and after July 1, 2021. All Letters of Agreement between BNSF and Shippers relating to the movement of Bulk Agriculture Products are superseded by this Agreement.

The following procedures are being implemented to help ensure a safe rail environment for all BNSF employees, the general public, and shippers while protecting BNSF customers' best interests. No Bulk Agriculture Products will be transported in containers by BNSF, unless the Shipper has signed this Letter of Agreement and is on file at BNSF, indicating the Shipper's awareness and acceptance of the requirements for shipping Bulk Agriculture Products in containers on BNSF.

The terms and conditions of the *BNSF Intermodal Rules and Policies Guide* in effect at the time a shipment of Bulk Agriculture Products shall apply, as long as they are not in conflict with the terms and conditions of this Letter of Agreement. The undersigned Shipper acknowledges that it has reviewed the *BNSF Intermodal Rules and Policies Guide*. In the event of a conflict between the terms of this Letter of Agreement and any provision of the *BNSF Intermodal Rules and Policies Guide*, the terms of this Letter of Agreement shall govern. Shipper may have also entered into a master transportation contract for intermodal shipments tendered to BNSF; to the extent that Shipper's transportation contract with BNSF includes a different fuel recovery program than the *BNSF Intermodal Rules and Policies Guide*, the fuel recovery terms of the transportation contract shall apply.

Loading of Bulk Agriculture Products are prohibited in rail-controlled equipment. When tendering Bulk Agriculture Products, the shipper is fully responsible for using ISO steamship or steel equipment that is not greater than ten (10) years old, is in suitable condition to carry concentrated weights, has no visible defects, and meets or exceeds AAR M-930 or M-931 specifications. Containers must be suitable to carry concentrated weight and capable of restraining outward pressure on the container that could lead to equipment failure during dynamic handling in the rail environment. Bulk Agriculture Products must be designated by **commodity description, "Bulk Agriculture," and proper Standard Transportation Commodity Code ("STCC") on the shipping instructions, which also includes the price authority "QTBulkAg". Shipper must not use a FAK STCC commodity or commodity description.** Shipper agrees to load the shipment in compliance with BNSF loading regulations to include weight distribution, blocking, and bracing. Shipper agrees to weigh and certify each load before tendering to BNSF. Weights cannot exceed federal highway regulations, manufacturer's specification for the equipment, or in any instance BNSF's gross weight restrictions as stated in the *BNSF Intermodal Rules and Policies Guide*. Shipper also agrees to provide a securely affixed bulkhead at the rear of the equipment to insure undue pressures are not exerted against the rear doors, which could lead to failure of the doors or discharge of product when opened. Bulkhead material and construction are subject to BNSF Load and Ride Solutions' approval. Shipper also agrees to perform a post loading inspection, which includes a thorough inspection of the undercarriage, flooring and all supporting components correcting defects or rejecting equipment, which would cause leakage or loss of product from the equipment while in BNSF possession. Any equipment exception to a component or significant deformation of any cross-member will cause the Shipper to reject the equipment and the equipment will not be tendered to BNSF for transport. Shipper also agrees to use high security barrier seals that will be affixed to the rear door.

BNSF will remove from transportation and place in storage pending further disposition any shipment of Bulk Agriculture Products, which BNSF discovers does not comply with the conditions set forth in this Letter of Agreement and the *BNSF Intermodal Rules and Policies Guide*. The Shipper tendering the non-complying shipment will be assessed charges as identified in the *BNSF Intermodal Rules and Policies Guide*, including charges for improperly tendering a restricted commodity, and liquidated damages to cover costs associated with additional handling and any disruption in service. Storage charges and recouping charges will be assessed in addition to the above surcharges. Acceptance for transportation by BNSF of a container of Bulk Agriculture Products, which is not in compliance with this Letter of Agreement or the *BNSF Intermodal Rules and Policies Guide* will not serve to release the Shipper from its obligations.

BNSF highly recommends the use of fully encapsulated bags to protect the commodity and equipment during transport; however, this is left to the Shipper's discretion. Shipper will make a thorough inspection of each container correcting defects or rejecting equipment, which would cause leakage or loss of product

from the equipment while in BNSF's possession. Shipper will also hold BNSF harmless for product deterioration, equipment contamination, leakage, or product loss.

For the purpose of determining Shipper's liability and obligation to defend and indemnify BNSF pursuant to the Shipper General Liability item in the *BNSF Intermodal Rules and Policies Guide*, the Shipper agrees that its failure to comply with the conditions set forth above shall constitute a failure to comply with equipment specifications and standards, or failure to load, brace, and distribute weight of the lading properly, as the case may be.

The party tendering Bulk Agriculture Products to BNSF agrees to indemnify, defend, and hold BNSF harmless from any and all claims, liabilities, fines, penalties, costs, losses, liens, causes of action, suits, demands, judgments, expenses, and damages (including, without limitation, court costs and attorneys' fees) resulting, in whole or in part, from: a) the improper blocking and bracing or loading of Bulk Agriculture Products; or b) the use of a container that is for any reason unsuitable for the movement of Bulk Agriculture Products. In the event that the terms of this Letter Agreement are not met, Shipper agrees to release BNSF from any and all claims it could otherwise assert against BNSF for loss or damage to Shipper's shipments or their contents. TO THE FULLEST EXTENT PERMITTED BY LAW, SHIPPER AGREES THAT THE ABOVE INDEMNITY AND RELEASE OBLIGATIONS SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, UNLESS SUCH LIABILITIES ARE WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF BNSF OR ITS EMPLOYEES. SHIPPER FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, TO INDEMNIFY, AND HOLD HARMLESS BNSF AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY BNSF UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF SHIPPER OR ANY OF ITS AGENTS, INVITEES, CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF BNSF. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

The 2007 BNSF Bulk Agriculture Products Letter of Agreement is cancelled as the Effective Date of this Agreement. This Letter of Agreement supersedes the 2007 BNSF Bulk Agricultural Letter of Agreement, provided, however, that neither Shipper nor BNSF is released from any obligation which accrued prior to the date of termination of the 2007 BNSF Bulk Agricultural Letter of Agreement, including without limitation, the making of any and all payments due there under.

This Letter of Agreement may at any time be amended, cancelled, or revoked by BNSF for any reason, in its sole discretion, that such amendment, cancellation, or revocation is appropriate.

The undersigned Shipper agrees to the terms and conditions set forth above and the parties agree that electronic signatures will be treated as valid and binding.

Name of Shipper: \_\_\_\_\_

Date: \_\_\_\_\_

By (signed): \_\_\_\_\_

By (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_