

BRAE CORPORATION

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I. C. C.
FEE OPERATION BR.

10660
RECORDATION NO. Filed 1425 July 20, 1979
JUL 23 1979 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

H. G. Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

JUL 23 1979
Date _____
Fee \$ 50.00

Dear Sir:

CC Washington, B. F

Enclosed for filing and recording pursuant to former Section 20c of the Interstate Commerce Act (49 U.S.C. §11303) are several counterparts of a Conditional Sale Agreement dated as of July 18, 1979 between FMC Corporation and Brae Corporation, relating to the railroad equipment described in and marked in accordance with Schedule A attached thereto.

The names and addresses of the parties to the Conditional Sale Agreement are as follows:

- (i) Manufacturer: FMC Corporation
Box 3616
4700 Northwest Front Avenue
Portland, Oregon 97208
- (ii) Vendee: Brae Corporation
Three Embarcadero Center
San Francisco, California 94111

Also enclosed is a check payable to the order of the Interstate Commerce Commission in the amount of \$50, the prescribed fee. Please file and record the Conditional Sale Agreement and cross-index it under the names of the Manufacturer and the Vendee. Return to the person presenting this letter, together with your letter confirming such filing and recordation and your fee receipt therefor, all counterparts of the enclosed Conditional Sale Agreement not required for filing.

Very truly yours,

Michael T. Everett
Michael T. Everett
Assistant Secretary

C. Conley

SCHEDULE A

SECTION 1. Purchase Order

Vendee's letter of September 19, 1978; Manufacturer's letters of May 10, 1979 (various) and July 6, 1979, covering the following cars:

<u>Manufacturer's Lot No.</u>	<u>Car Numbers (Inclusive)</u>	<u>No. of Cars</u>	<u>Railroad</u>
17963	GWF 1001-1200	200	Galveston Wharves
	ESLJ 7700-7712, 7714 to 7750	50	East St. Louis Junction
18046	POTB 101-150	50	Port of Tillamook Bay
18047	SERA 5000-5049	50	Sierra
18048	UO 1500-1549	50	Union Railroad of Oregon
18065	DVS 1001-1050	50	Delta Valley & Southern

SECTION 2. Delivery Point

Manufacturer's plant, Portland, Oregon.

SECTION 3. Railroad Equipment

450 70 ton 50' 6" Boxcars, car numbers as listed in Section 1.

SECTION 4. Purchase Price

Various, per Manufacturer's letters, as amended.

SECTION 5. Markings on Cars

Stenciled in letters at least one inch in height:

-On Lot No. 17963, 18046, 18047 & 18065:

"Title to this car subject to documents recorded under Section 20c of Interstate Commerce Act."

-On Lot No. 18048:

"Ownership subject to a security agreement filed with the Interstate Commerce Commission."

Interstate Commerce Commission
Washington, D.C. 20423

7/23/79

OFFICE OF THE SECRETARY

Michael T. Everett
Assistant Secretary
Brae Corporation
Three Embarcadero Center
San Francisco, Calif. 94111

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/23/79 at 1:40pm, and assigned recordation number(s). 10660

Sincerely/yours,



Secretary

Enclosure(s)

SE-30
(3/79)

RECORDATION NO. 10660 Filed 1425

JUL 23 1979 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

This CONDITIONAL SALE AGREEMENT, dated as of July 18, 1979, by and between FMC Corporation, a Delaware corporation (hereinafter called the "Manufacturer"), and Brae Corporation, a Delaware corporation, (hereinafter called "Vendee").

W I T N E S S E T H

The Manufacturer and the Vendee have heretofore entered into the Purchase Order (hereinafter called the "Purchase Order") referred to in Section 1, of Schedule A, hereto attached (hereinafter called "Schedule A") whereunder the Manufacturer has agreed to construct and deliver to the Vendee at the delivery point specified in Section 2 of Schedule A and the Vendee has agreed to accept and pay for the Railroad Equipment (hereinafter individually called a "Car" and collectively called the "Cars") described in Section 3, of Schedule A; and

Inasmuch as the Vendee does not wish to pay for the Cars prior to shipment of the Cars from the Manufacturer's plant, the Vendee (in order that it may use the Cars during the time between shipment from the Manufacturer's plant and payment of the purchase price 10 business days after invoicing) has requested the Manufacturer to give the Vendee title and possession to the Cars on completion, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to deliver the Cars to the Vendee and the Vendee agrees to accept the Cars from the Manufacturer at the delivery point above referred to. When the purchase price of a Car has been paid, this Agreement shall automatically be terminated as to such Car and the Manufacturer's purchase money security interest shall automatically terminate without further action by or notice to any

party concerned as to such Car. On delivery of each Car to the Vendee, the Vendee will assume the responsibility and risk of loss with respect to such Car.

2. After the Vendee's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Order, he will execute and deliver to the Manufacturer a certificate of acceptance acknowledging the receipt of delivery of such Car under this Agreement. Title to each Car shall pass to the Vendee upon the receipt by the Manufacturer of such a certificate of acceptance with respect thereto; provided, however, that the Manufacturer shall retain a purchase money security interest in each Car until it has received payment in full therefor. At such time the Manufacturer shall execute and deliver to the Vendee a bill of sale confirming the earlier transfer of title for the Cars as is, where is, and without warranty of any kind except only that the Cars are free from all liens and encumbrances created by the Manufacturer. Neither the inspection nor any examination nor the acceptance of any Car shall be deemed a waiver or a modification by the Vendee of any of its rights against the Manufacturer under any warranties contained in the Purchase Order. The Vendee, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation. In addition, the Vendee shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's security interest in the Cars.

3. The Vendee agrees that it will permit no liens of any kind to attach to the Cars (other than any rights of its lessee under the Vendee's lease with such lessee); and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cars;

because of the ownership, use, marking, operation, management or handling of the Cars by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

4. The Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement, if not theretofore paid.

5. Prior to the delivery of each Car to the Vendee, such Car will be numbered with a car number as set forth in Section 1, of Schedule A, and there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one inch in height the words set forth in Section 5, of Schedule A.

6. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Cars as contemplated by this Agreement shall not relieve the Vendee of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Purchase Order, or impair any of the Manufacturer's rights under the Purchase Order, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

7. The Manufacturer shall be entitled to all the rights of a secured party under the Uniform Commercial Code of California and of the Interstate Commerce Act as in effect at any time during which it retains a security interest in the Cars hereunder.

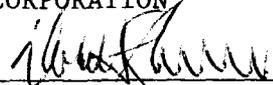
8. Upon payment for any Car, Manufacturer will take such action as may be reasonably requested by Vendee in order to confirm the release of the security interest in such Car.

(Corporate Seal)

ATTEST:

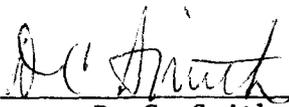


BRAE CORPORATION

By: 

Title: Vice President

FMC CORPORATION
Marine and Rail Equipment Division

By: 

D. C. Smith
Vice President

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