

TRIGON PACIFIC TERMINALS LTD.

PURCHASE ORDER TERMS AND CONDITIONS



TRIGON PACIFIC TERMINALS LTD.

2110 RIDLEY ROAD
PRINCE RUPERT, BC
CANADA V8J 4H3

DOCUMENT UPDATE

02/20/2025

1. Interpretation.

- (a) The Purchase Order is an offer by Buyer identified in the Purchase Order for the purchase of the Goods specified on the face of the Purchase Order (the “**Goods**”) from the Seller identified in the Purchase Order in accordance with and subject to these terms and conditions (the “**Purchase Order Terms and Conditions**”). This Purchase Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Purchase Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations, and warranties, and communications, both written and oral, with respect to the subject matter of the Purchase Order.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Purchase Order, the Purchase Order Terms and Conditions and the Specifications, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
 - (i) anything that establishes a higher standard of performance, quality, durability or service shall take precedence over anything that establishes a lower standard of performance, quality, durability or service;
 - (ii) the Purchase Order Terms and Conditions;
 - (iii) the Purchase Order; and
 - (iv) the Specifications.
- (c) The Purchase Order expressly limits Seller’s acceptance to the terms of the Purchase Order. The Purchase Order expressly exclude any of Seller’s general terms and conditions of sale, including those set out in the Specifications.
- (d) The Purchase Order Terms and Conditions apply to any repaired or replacement Goods provided by Seller hereunder.
- (e) Buyer is not obligated to any minimum purchase or future purchase obligations under this Purchase Order.
- (f) Unless the buyer agreed to seller terms and conditions.

2. Acceptance. This Purchase Order is not binding on Buyer until Seller accepts the Purchase Order in writing. If Seller does not accept the Purchase Order in writing within [10] days of Seller’s receipt of the Purchase Order, this Purchase Order will lapse. Buyer may withdraw the Purchase Order at any time before it is accepted by Seller.

3. Incoterms. The Incoterm identified in the Purchase Order applies to the Purchase Order. DDP, Incoterms 2020 Rules shall apply if the Purchase Order does not identify an Incoterm. If there is any direct conflict or inconsistency between the Incoterm identified in a Purchase Order and the Purchase Order, then the Purchase Order shall prevail and govern to the extent of such conflict or inconsistency.

4. Shipment and Delivery Requirements. Time, quantity, and delivery to the Delivery Location are of the essence under the Purchase Order. Seller shall mark, ship and deliver Goods strictly in

the quantities, by the methods, to the Delivery Location and by the Delivery Date, each as specified in the Purchase Order, including the applicable Incoterm specified in the applicable Purchase Order. Delivery times will be measured to the time that Goods are actually received by Buyer at the Delivery Location. If Seller does not comply with any of its delivery obligations under this Section 4, without limiting Buyer's other rights under the Purchase Order or at law, Buyer may, in Buyer's sole discretion and at Seller's sole cost and expense:

- (a) approve a revised Delivery Date;
- (b) require expedited or premium shipment, at Seller's cost; or
- (c) cancel the Purchase Order and obtain similar goods from other sources.

If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Purchase Order immediately by providing written notice to Seller and Seller shall indemnify the Buyer Indemnified Parties against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Unless otherwise expressly agreed to by the parties in writing, Seller may not make partial shipments to Buyer.

5. Delivery Location. All Goods shall be delivered to the Delivery Location, as specified in the Purchase Order during Buyer's normal business hours or as otherwise instructed by Buyer.

6. Title and Risk of Loss. Title to Goods shipped under the Purchase Order passes to Buyer upon the earliest to occur of:

- (a) delivery of the Goods to Buyer pursuant to the applicable Incoterm;
- (b) payment by Buyer of any portion of the Purchase Order Price for such Goods;
- (c) Buyer's acceptance of the Goods; and
- (d) the time of identification of the Goods/Seller's tender of the Goods to the carrier/delivery of the Goods to the Delivery Location.

Goods will be deemed identified upon Seller's commencement of production, unless the Goods are part of Seller's standard stock (that is, off-the-shelf) and also sold to persons other than Buyer, in which case the Goods will be deemed identified when marked or otherwise designated by Seller as relating to the Purchase Order. Title will transfer to Buyer even if Seller has not been paid for such Goods, provided that Buyer will not be relieved of its obligation to pay for Goods in accordance with the terms hereof. The risk of loss and damage to Goods shall pass to Buyer pursuant to the applicable Incoterm specified in the Purchase Order.

7. Packaging. All Goods shall be packed for shipment according to Buyer's instructions identified in the Purchase Order or the Specifications, or if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition and in accordance with applicable law and industry standards. Seller shall provide Buyer with shipment documentation showing the Purchase Order Number, the quantity of pieces in the shipment, the number of cartons or containers in the shipment, Seller's name, the bill of lading number and the country of origin. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's sole cost and expense.

8. Amendments and Modifications. No change to the Purchase Order is binding upon Buyer unless it is in writing, specifically states that it amends this Purchase Order and is signed by an authorized representative of Buyer.

9. Inspection and Rejection of Non-Conforming Goods. Goods are subject to Buyer's inspection and approval or rejection notwithstanding Buyer's prior receipt of, or payment for, the Goods. If Buyer determines, in its sole discretion, that Goods delivered under the Purchase Order are non-conforming or defective, Buyer may, at its option:

- (a) if such Goods are non-conforming or defective, either:
 - (i) reject the non-conforming or defective Goods (including entire lots of Goods) for a refund plus any inspection, test, shipping, handling, and transportation charges paid by Buyer;
 - (ii) require prompt repair or replacement of such Goods, at Seller's sole cost, on Buyer's written instruction; or
 - (iii) rescind the Purchase Order in its entirety;
- (b) if such Goods are excess Goods, reject such excess Goods for a refund, plus any inspection, test, shipping, handling, and transportation charges paid by Buyer; or
- (c) in either case, retain such Goods.

In each case, the exercise by Buyer of any other rights available to Buyer under the Purchase Order or under applicable law shall not be limited. Buyer shall ship from any location, at Seller's expense and risk of loss, the non-conforming or defective Goods or excess Goods to the nearest authorized Seller location. If Buyer exercises its option to replace non-conforming or defective Goods, Seller shall, after receiving Buyer's shipment of non-conforming or defective Goods, ship to Buyer, at Seller's expense and risk of loss, the replaced Goods to the Delivery Location in a timely manner. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Purchase Order for cause pursuant to Section 18. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Purchase Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

10. Price. Seller shall supply the Goods to Buyer at the price set forth in the Purchase Order (the "**Purchase Order Price**"). Unless otherwise provided in a Purchase Order, including pursuant to any Incoterm identified in a Purchase Order:

- (a) the Purchase Order Price includes, and Seller is solely responsible for, all costs and expenses relating to quality control, testing, quality assurance, durability and performance testing, inventory maintenance, packing, crating, boxing, transporting, loading and unloading, customs, tariffs and duties and any related taxes, insurance, Seller's obligations under Section 13, any ancillary services under a Purchase Order, and any other similar financial contributions or obligations relating to the sale and delivery of the Goods; and
- (b) the Purchase Order Price is firm and is not subject to increase for any reason, including changes in market conditions, increases in raw material, component, labour, or overhead costs, or because of labour disruptions, changes in program timing or length or fluctuations in production volumes. No increase in the Purchase Order Price is effective, whether due to increased material, labour or transportation costs or otherwise, without the prior written consent of Buyer.

The Purchase Order Price is exclusive of harmonized sales tax, or goods and services tax, imposed under the *Excise Tax Act* (Canada) (or any provincial or territorial legislation imposing sales tax, harmonized sales tax or goods and services tax).

11. Payment Terms. Seller shall issue invoice(s) to Buyer for Goods under a Purchase Order pursuant to the invoicing and payment terms specified in a Purchase Order. Any payment by Buyer of an invoice is not an acceptance of any non-conforming element or terms on such invoice or the related Goods. Except for any amounts disputed by Buyer, Seller's accurate and correctly submitted invoices will be payable within 30 business days following the later of:

- (a) Buyer's receipt of Seller's invoice; or
- (b) Buyer's receipt and acceptance of the applicable Goods.

Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may reasonably direct, in connection with any liens, security interests or other encumbrances on the Goods. Any payment by Buyer for Goods will not be deemed acceptance of the Goods or waive Buyer's right to inspect, but rather such Goods will be subject to acceptance in accordance with Section 9. The Purchase Order Price shall be in Canadian dollars and Buyer shall make all payments in Canadian dollars, unless agreed to otherwise an another currency

12. Set-Off. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off or withhold at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

13. Conditions and Warranties. Seller warrants to the Buyer Indemnified Parties that for a period of one year from the date that the Buyer accepted the Goods or such other period as may set out in the Purchase Order (the "Warranty Period"), all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to the Specifications; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance, or payment of or for the Goods by Buyer. These warranties are cumulative and are in addition to any other warranty provided by law. Any applicable statute of limitations runs from the date of Buyer's discovery of the non-compliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of non-compliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or non-conforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or non-conforming Goods to Seller and the delivery of repaired or replacement Goods to Buyer.

14. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer, Buyer's affiliates, successors, or assigns, each of their respective directors, officers, shareholders, and employees and Buyer's customers or end users of the Goods (collectively, "**Buyer Indemnified Parties**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including reasonable legal and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") relating to, arising out of or occurring in connection with the Goods purchased from Seller or Seller's negligence, wilful misconduct, or breach of the Purchase Order. Seller shall not enter into any settlement without the Buyer Indemnified Party's prior written consent.

15. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify, and hold harmless any Buyer Indemnified Party against any and all Losses arising out of or in connection with any claim that Buyer Indemnified Party's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret, or other intellectual property right

of any third party. In no event shall Seller enter into any settlement without the Buyer Indemnified Party's prior written consent.

16. Insurance. Unless otherwise specified in the Purchase Order, including as required by any Incoterm identified in a Purchase Order, during the term of the Purchase Order and for a period of **one year** thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than Two Million Canadian dollars (\$2,000,000.00) with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in the Purchase Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with **90 days'** advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Buyer Indemnified Parties.

17. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licences, permissions, authorizations, consents, and permits that it needs to carry out its obligations under the Purchase Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under the Purchase Order. Buyer may terminate this Purchase Order if any government authority imposes antidumping duties, countervailing duties, or any retaliatory duties or any other penalties on the Goods.

18. Termination. Buyer may terminate the Purchase Order, in whole or in part, at any time without cause on ten (10) days' prior written notice to Seller. In addition to any remedies that may be provided under the Purchase Order, Buyer may terminate the Purchase Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with the Purchase Order, in whole or in part. If the Seller becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, liquidation, reorganization, arrangement, or assignment for the benefit of creditors, then the Buyer may terminate the Purchase Order upon written notice to Seller. If Buyer terminates the Purchase Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

19. Limitation of Liability. Nothing in this Purchase Order shall exclude or limit (a) Seller's liability under Section 13, Section 14, Section 15 and Section 20 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or wilful misconduct. Each party's maximum liability to the other party shall not exceed the greater of three times the Purchase Order total value or Two Hundred and Fifty Thousand Dollars (\$250,000.00) or the aggregate amount actually paid or payable under the Purchase Order.] **Waiver.** No waiver by Buyer of any of the provisions of the Purchase Order shall be effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Purchase Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

20. Confidentiality. All non-public, confidential, or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by

Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” in connection with the Purchase Order is confidential, solely for the use of performing the Purchase Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

21. Force Majeure. Any delay or failure of either party to perform its obligations under the Purchase Order will be excused to the extent that the delay or failure was caused directly by an event beyond such party’s control, without such party’s fault or negligence and that by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, epidemics, pandemics, embargoes, explosions, riots, wars, or acts of terrorism) (each, a “**Force Majeure Event**”). Seller’s financial inability to perform, changes in cost or availability of materials, components or services, market conditions, or supplier actions, or contract disputes will not excuse performance by Seller under this Section 21. The impacted party shall:

- (a) give the other party prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event; and
- (b) use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under the Purchase Order.

During any Force Majeure Event, Buyer may, at its option:

- (a) purchase Goods from other sources without liability to Seller;
- (b) require Seller to deliver to Buyer all Goods acquired under the Purchase Order; or
- (c) require Seller to provide Goods from other sources in quantities and at a time requested by Buyer and pursuant to the Purchase Order Price.

22. Assignment. Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under the Purchase Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer, or subcontract any or all of its rights or obligations under the Purchase Order upon notice but without Seller’s prior written consent.

23. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Purchase Order shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Purchase Order.

24. Third-Party Beneficiaries. The parties hereby designate each Buyer Indemnified Party as a third-party beneficiary of Sections 13, 14, 15 and 16, having the right to enforce such Sections.

25. Governing Law. The Purchase Order, and all matters arising out of or relating to the Purchase Order, are governed by, and construed in accordance with, the laws of the Province of British Columbia, and the federal laws of Canada applicable therein. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods applies to the Purchase Order.

26. Dispute Resolution. Any controversy, dispute, disagreement, or claim arising out of, relating to or in connection with the Purchase Order or any breach thereof, including any question regarding its existence, validity, or termination, shall be finally and conclusively resolved by a court of competent jurisdiction in British Columbia, and the parties submit, consent, and waive any objection, to the jurisdiction and venue of those courts.

27. Cumulative Remedies. The rights and remedies under the Purchase Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law.

28. Notices. Any notice required or permitted by the Purchase Order shall be in writing and shall be provided by registered mail, by hand (in each case with a copy by electronic submission) or by electronic submission as specified in the Purchase Order. A notice: (a) delivered by registered mail shall be deemed to have been received on the third business day after mailing; (b) given by hand shall be deemed to have been received on the day that it is delivered; and (c) given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.

29. Severability. If any term or provision of the Purchase Order is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Purchase Order or invalidate or render unenforceable such term or provision in any other jurisdiction.

30. Survival. Provisions of the Purchase Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Purchase Order including, but not limited to, the following provisions: Section 12 (Set-off), Section 13 (Conditions and Warranties), Section 114 (General Indemnification), Section 115 (Intellectual Property Indemnification), Section 16 (Insurance), Section 17 (Compliance with Laws), Section 20 (Confidentiality), Section 25 (Governing Law), Section 26 (Dispute Resolution) and this Section 30 (Survival).

31. General. Unless otherwise expressly provided, in this Purchase Order:

- (a) all references in this Purchase Order to a designated "Article", "Section" or "Schedule" is to the designated Article or Section of or Schedule to this Purchase Order;
- (b) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Purchase Order as a whole and not to any particular portion hereof;
- (c) the headings are for convenience only, do not form a part of this Purchase Order and are not intended to interpret, define or limit the scope, extent or intent of this Purchase Order or any provision hereof;
- (d) the singular of any term includes the plural, and vice versa; the use of any term is equally applicable to any gender and, where applicable, a body corporate;
- (e) the word "including" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto;
- (f) references to time of day or date mean the local time or date in Vancouver, BC.