



Effective as of 5/10/23

SCRAP SALES TERMS AND CONDITIONS

- 1. Definitions.** "Seller" means "Trifecta Services Company" and/or its affiliates/subsidiaries, or any party for whom Trifecta Services Company may be selling scrap on behalf of, and "Buyer" is the individual, firm, or corporation when purchasing Seller's scrap. "Scrap" is the property for sale and/or sold by Seller to Buyer pursuant to these Scrap Sales Terms and Conditions (hereinafter "Agreement").
- 2. Warranty.** All scrap is offered for sale "AS IS" and "WHERE IS." The description of scrap for sale is based on currently available information, however, SELLER MAKES NO WARRANTIES REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE KIND, CHARACTER OR EXTENT OF DEVIATION FROM DESCRIPTION OR ITS MERCHANTABILITY OR FITNESS FOR ANY USE OR PURPOSE.
- 3. Inspection.** Buyer may inspect sample lots of scrap prior to loading. Samples do not create a warranty of the scrap to be sold as samples may differ from the scrap to be accumulated.
- 4. Condition of Scrap.** No shipment of scrap by Seller will be subject to rejection by Buyer. Any disputes as to weights or quality of scrap shall be governed by Section 8 below.
- 5. Delivery/Removal.** Immediately upon request of Seller, Buyer shall instruct Seller as to the method of transportation for shipments to be made there under. In the event Buyer elects shipment via Buyer's own conveyance, Buyer shall furnish such conveyance at the loading point designated by Seller within 24 hours of notification by Seller that a shipment is ready. Delivery will be F.O.B. at Seller's plant or warehouse selected by Seller and shall be made from time to time as Seller accumulates quantities substantially sufficient to load the type of conveyance specified in the bid list unless Buyer elects delivery by auto freight or buyer's own transportation. Where scrap is shipped by railroad car, Seller may ship any combination of classification in a single car, provided proper segregation is maintained, minimum cars and/or less than minimum cars will be shipped when specified in the bid list.

Payment.

- 6.1 Cash on Delivery.** Unless Seller has extended credit, payment in full is due from Buyer upon Seller's notification to Buyer that a shipment is ready. Unless credit has been extended, Buyer shall make payment prior to delivery, which may be scheduled as early as 24 hours after Seller's notification to Buyer that a shipment is ready, as provided in Paragraph 5. Such payment shall be made in United States Dollars and in immediately available funds by certified check or cashier's check drawn on a bank mutually acceptable to Seller and Buyer.

6.2 Credit Limits. Buyer(s) who have been approved for credit have been limited to specific credit amounts. These limits cannot be exceeded irrespective of the following payment terms. Buyer(s) will be advised of their credit limit upon request.

6.3 Credit Sales. At its sole discretion Seller may extend credit to Buyer, in which case Seller will establish specific credit limits and payment terms (including any interest on overdue payments), which shall be binding upon Buyer. If no interest terms are specified, all invoices paid after the due date specified within shall accrue interest at the rate of 1.5% per month.

6.4. Invoices. Buyer shall pay Seller in accordance with Seller's invoices.

6.4.1 Taxes. Payment shall include all taxes applicable to the sale there under unless the Buyer furnishes an appropriate tax exemption certificate.

6.5 Default. In the event of default or breach of any payment or other provisions of this Agreement, Buyer shall reimburse Seller for any collection costs incurred by Seller, including reasonable attorney's fees and court costs.

7. Title. Title to the scrap sold hereunder shall vest in the Buyer only upon receipt of full and final payment.

8. Weights and Quality.

8.1 Weights. For pickup by Buyer's truck, weight shall be determined and supported by weight certificates issued by Seller's weigh masters on Seller's scales, and in the case of Buyer pickup from locations not having scales, certified weight certificates at Buyer's expense from other scales designated by Seller will be accepted. For railcar deliveries, Seller shall obtain and report the certified railroad empty car weight and the gross car weight and determine and report what Seller deems to be the dunnage weight for each rail shipment. Buyer shall accept Seller's reported new weight. No price adjustment shall be made for loss of any kind during shipment.

8.2 Scale Tickets and Other Documentation. Buyer is responsible for providing Seller with scale tickets and other supporting documentation as may be reasonably be requested by Seller from time to time. Such documentation requested may include, but not necessarily be limited to, scale tickets, documentation concerning weights, percentage recovery, and/or prices paid for Scrap by Seller's customer(s).

8.3 Dispute as to Scrap Quality. It is Buyer's responsibility to immediately notify Seller as to any disputes or determinations as to the quality of the scrap sold to Buyer. Such notice, together with supporting documentation sufficient to satisfy Seller in Seller's reasonable discretion as to a genuine discrepancy quality must be provided to Seller, without demand by Seller, within 5 business days. In the event Buyer fails to provide notice and documentation sufficient to satisfy Seller within 5 business days from the date of the delivery of the scrap, Buyer and Seller agree that Seller's records as to the quantity and quality of the materials delivered to Buyer shall be controlling as to the transaction.

9. Risk of Loss. Upon delivery to Buyer or to conveyance specified by Buyer, whichever first occurs first, all risk of delay and of loss, damage, or destruction of the scrap from any cause whatsoever shall be borne by Buyer.

10. Damage or Loss of Seller's Property. Buyer agrees to indemnify and make Seller whole for any damage, destruction or loss arising out of or relating to the performance or non performance by Buyer of any obligations concerning or relating any sale or purchase, which results from the acts or omissions of Buyer, its agents, officers, employees, vendors, subcontractors, and/or sub-sub contractors. Buyer further agrees that for the purpose of this paragraph, damage, destruction or loss, including conversion, of Seller's property by officers, employees or agents of Buyer shall be deemed to be within the scope of employment of said officers, employees or agents.

11. Buyer's Indemnity. Buyer hereby agrees to indemnify and hold harmless Seller, its subsidiaries/affiliates, and their respective officers, directors, agents, principals and employees from and against any claim, expense, including attorney's fees, or liability whatsoever for injury to or death of any person, including any employees of Buyer, if the claim, expense or liability from or is claimed to result from (i) any acts or omissions of Buyer, Seller, or their respective officers, Agents, or employees in connection with the performance of this transaction or in connection with the presence of Buyer, its agents, or employees on Seller's premises, whether or not due to the fault or negligence of Buyer, whether or not due to the fault or negligence of Seller, and whether or not such claims be false, fraudulent or groundless, or (ii) the disposal, removal, resale or use of the scrap by any one person, or (iii) the breach of a Buyer, respective officers, agents or employees of any terms or conditions of this Agreement. In connection with the foregoing indemnity, Buyer irrevocably waives any immunity it may have under applicable industrial insurance laws.

12. Use of Seller's Name. Buyer agrees not to advertise in any manner the scrap as being Seller's surplus scrap or to use it in any other manner Seller's name or the word "Trifecta" or any similar word, in connection therewith without Seller's written consent.

13. Entire Agreement. All sales will be subject to the provisions of this Agreement, including prices or other terms specifically, incorporated by reference AND NO OTHERS. This Agreement constitutes oral or written representations and agreements related to this sale, including Buyer's purchase order, which have not been incorporated and made a part of this Agreement by specific written reference. No modification of this Agreement shall be binding on Seller unless agreed to in writing signed by a duly authorized officer of Seller.

14. Non-Waiver. Acceptance by Seller of partial or delinquent payments or failure to exercise any right there under shall not waive any obligation of Buyer or right of seller, or waive any other similar default.

15. Export Compliance Requirements.

The Parties shall comply with all U.S. export control laws and regulations. The (items) sold under this Agreement may be subject to the provisions of the Export Administration Act of 1979 and the Export Administration Regulations promulgated there under, the Arms Export Control Act and the International Traffic in Arms Regulations, and the sanctions laws administered by the Office of Foreign Assets Control. The Parties acknowledge that these statutes and regulations impose restrictions on import, export and transfer to third countries of commodities and related data, and that licenses from the U.S. Department of Commerce or U.S. Department of State may be required before such commodities or data can be transferred, and that such licenses may impose further restrictions on use and further transfer of such commodities and data.

16. Governing Law. This Agreement shall be governed by the Uniform Commercial Code as adopted by the State of North Carolina, except for those portions of this Agreement dealing with Buyer's indemnification, which shall be governed by the law of the state where the scrap was

located at the time of pickup. Buyer consents to exclusive jurisdiction and venue in the state and federal courts within the State of North Carolina, County of Mecklenburg. To the maximum extent allowable by law, Buyer waives any right to personal service of process. Any action or proceeding by Buyer arising out of or in connection with this transaction, including any claim for Trifecta's breach of contract or Trifecta's breach of warranty, must be commenced within one hundred and eighty days after the delivery of the goods to Buyer.

17. Insurance. Buyer shall comply with all insurance requirements set forth in the Contract Documents, if any, to the extent that Seller's ability to sell the scrap to Buyer is derived from a contract between Seller and another counterparty. If no such requirements exist, Buyer, and any person or entity directly or indirectly employed by Buyer, hereby agree to obtain and/or maintain proper worker's compensation or employer's liability insurance (at statutory limits in the jurisdiction where work is being performed), commercial general liability insurance (for no less than \$1,000,000.00), public liability insurance (for no less than \$1,000,000.00), and automobile liability insurance (for no less than \$1,000,000.00). To the extent that the Buyer is performing any professional services, such as design, detailing, or engineering, Buyer and any person or entity directly or indirectly employed by Buyer, hereby agree to obtain and/or maintain Errors and Omissions insurance in an amount not less than \$1,000,000.00 per claim. To the extent Buyer is providing hauling or transportation services, Buyer and any person or entity directly or indirectly employed by Buyer, hereby agree to obtain and/or maintain automobile liability coverage for no less than Five Million Dollars (\$5,000,000.00) per claim with a deductible of not more than \$5,000 per claim, together with motor truck cargo coverage for no less than Two Million Dollars (\$2,000,000) per claim with a deductible or self-insured retention of not more than \$5,000 per claim. Such insurance, to the extent Buyer is transporting any vehicles or equipment for TSC, shall include coverage for any loss of use. TSC, together with any other entities as required under the Contract Documents, shall be named as an additional insured on a primary and noncontributory basis under Buyer's commercial general liability, commercial auto liability, and motor truck cargo coverage policies. Further, where applicable by law, an MCS-90 endorsement will be required.

All insurance, except Errors and Omissions, shall be on an occurrence basis. All insurance shall be issued by companies with a minimum AM Best rating of A- (VII) or better, and contain waivers of subrogation in favor of TSC and Owner. *TSC, the Owner, and all parties required by the Contract Documents shall be named as an additional insured under all insurance required by this Agreement*, except worker's compensation and Errors and Omissions insurance. Upon TSC's request, the Buyer or their insurance company/agent shall send their certificate of insurance with these requirements to TSC with the Purchase Order number listed on the certificate. To the fullest extent permitted by law, the insurance afforded to the additional insured(s) shall be as broad as the insurance afforded to the first named insured. In the event any party provides insurance with limits greater than those required, the insurance afforded to an additional insured shall be up to the full limits provided by such policy, and this Agreement shall be deemed to require such full limits. Buyer may achieve the required limits and coverage for General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Contract Documents or the Purchase Order.

Seller reserves the right to withhold payment of any invoice until receipt of an appropriate certificate of insurance in compliance with this paragraph.

18. Applicability, Acceptance and Modification. These terms and conditions apply to all quotations and invoices covering the sale of scrap by Seller. Trifecta's acceptance of any Buyer's order is expressly made conditional on Buyer's acceptance of the terms and conditions

set forth herein. The terms and conditions set forth herein (together with the corresponding invoices constitute the complete agreement between the Trifecta and the Buyer and may be accepted only in accordance with their terms. They may not be modified, by issuance of purchase order by buyer or otherwise, except by written agreement referring specifically to these terms and conditions and signed by a duly authorized officer of Trifecta. Any provisions of Buyer's order or Buyer's purchase order which are inconsistent with the foregoing shall be of no force and effect unless Trifecta has agreed to a modification of these terms and conditions in the manner set forth herein. Buyer's failure to dissent from the terms and conditions, or Buyer's acceptance or use of the Trifecta goods or services shall constitute Buyer's acceptance of these terms and conditions. Buyer, by these presents and the acceptance of the goods ordered herein, represents and warrants the Buyer is solvent and able to pay for the goods in accordance with these terms and conditions of sale. Any order accepted by Trifecta shall not be assigned, sold or otherwise transferred by Buyer unless Trifecta expressly agrees in writing to such sale, assignment or other transfer.