



# MARINE FENDERS INTERNATIONAL, INC

## TERMS AND CONDITIONS

- 1. SALE OF PRODUCTS:** Customer's acceptance of Seller's offer to sell the Products is limited to these terms and conditions. Upon such acceptance, Seller will sell the Product to Customer in accordance with the terms and subject to the conditions set forth herein. In connection herewith, any Purchase Order for or other document utilized or to be utilized by Customer is or will be used for convenience only, and terms and conditions therein will have no force or effect between the parties. Any change in, or modification of or addition to the terms and conditions set forth herein will not be binding upon Seller unless set forth in writing and signed by Seller.
- 2. PRICE AND TAXES:** Unless otherwise expressly provided herein, the price of the Product does not include any service, personnel, or equipment for the installation of the Product. In addition to the price of the Product, Customer will be responsible for all taxes imposed by any governmental authority relating to the sale of the Product to the Customer. Any applicable taxes required for sales made and delivered within California, will be added to the price if required unless an exemption certificate is provided prior to invoice date. Should the cost of materials increase by more than 12% from the time of the initial purchase order, Seller shall have the right to either cancel the purchase order or increase the contract price by 8%. In this regard, Customer shall have the right to cancel the Purchase Order if it does not agree to pay the increased contract price.
- 3. PAYMENT TERMS:** Net 30 Days. Unless otherwise stated, all payments shall be in United States dollars and due within 30 days from date of invoice/date of delivery. Payments are due within said 30 days regardless of payment agreements between purchaser and other parties. If partial shipments occur, each such partial shipment shall be considered delivery, and a pro rate payment shall become due as each such partial shipment is made. If Purchaser delays shipment, the date of readiness for shipment shall be deemed to be the date of delivery for payment purposes. On late payments, the contract price shall, without prejudice to Seller's right: to immediate payment, be increased by 1 ½% per month on the unpaid balance, but not to exceed the maximum permitted by law.
- 4. DELIVERY POINT/DELIVERY DATE:** Delivery shall be as stated on the Quotation and is based on number of weeks from date of receipt of Purchaser's acceptance of this Agreement and of information required of Purchaser for manufacture to include fully 'Approved' shop drawings, project specifications and any other requested information. Manufacturing will not begin based on portions of the documentation being approved. Partial shipments shall be permitted. The delivery date is based upon work already scheduled at the factory on the date hereof and is subject to revision to meet conditions on date of Purchaser's acceptance. When terms are F.O.B., C&F, or C.I.F. destination, "destination" shall mean the common carrier point nearest the destination unless the quotation specifies delivery to the jobsite. Seller reserves the right to accept or reject any request from Customer to delay shipment of Products. If Seller accepts such request, Customer will pay to Seller, at the price set forth for all additional expenses incurred in delaying shipment.
- 5. QUOTATION EXPIRATION:** This agreement will be deemed accepted only if signed by Purchaser and received by Seller within the validity date stated on the quotation. Documents and related correspondence shall be sent to the Seller's office at the address shown on the front of this form.
- 6. CONTRACT DOCUMENTS:** The Contract Documents consist of this agreement and any specifications and drawings provided by Seller in connection herewith, and any modification thereof entered into in writing by both parties. The Contract Documents represent the entire integrated agreement between the parties hereto and supersede all prior negotiations, representations, of agreements, either written or oral including any other purchase orders, proposals or bids.
- 7. ACCEPTANCE OF PRODUCTS:** Immediately upon its receipt of the Products, Customer will inspect the equipment and notify Seller in writing of any non-conformity of the Products. Customer may reject or revoke its acceptance of the Products only if (i) The Product received by the Customer is in substantial non-conformity with the Product described herein, and (ii) Customer notifies Seller in writing of any such substantial non-conformity within 3 days following Customer's receipt of the Product. Otherwise, the Product shall be deemed to have been irrevocably accepted by Customer.
- 8. WARRANTY:** Seller warrants to the Purchaser title to the Product(s) on the date of delivery to Purchaser and, also warrants that the Product(s) on date of delivery to Purchaser will conform to the specifications set forth in the Contract Documents and will be free of defects in workmanship and material. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, AND CONSTITUTES THE ONLY WARRANTY OF SELLER WITH RESPECT TO THE PRODUCT (S). FURTHER SELLER MAKES NO WARRANTIES AS TO PERFORMANCE OR PRODUCTION, NOR AS TO EXPENDABLE OR WEARING PARTS.  
If within one year from date initial operation, but not more than eighteen months from date of shipment by Seller of any item of Product(s), Purchaser discovers that such item was not as warranted above and promptly notifies seller in writing thereof, Seller shall remedy such nonconformance by, at Seller's option, adjustment or repair or replacement of the item and any affected part of the Product(s). Purchaser shall assume all responsibility and expense for removal, reinstallation, and freight in connection with foregoing remedies. The same obligations and conditions shall extend to replacement parts furnished by Seller hereunder. Seller shall have the right to determine the disposition of parts replaced by it under Seller's warranty, and Purchaser's entitlement to warranty remedies is contingent upon Purchaser's cooperation in returning replaced parts to Seller, if requested, at Seller's expense.  
THIS STATES PURCHASER'S EXCLUSIVE REMEDY AGAINST SELLER AND ITS SUPPLIERS RELATING TO THE PRODUCTS (S), WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM ANY CAUSE.  
Seller and its suppliers shall have no obligation as to any Product, which has been improperly stored or handled, or which has not been operated or maintained according to Seller furnished manuals or other written instructions or is operated during the warranty period with other than genuine Seller parts.
- 9. LIMITATION OF LIABILITY:** NEITHER SELLER NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY FOR LOSS OF USE. REVENUE OR PROFIT, OR FOR COST OF CAPITAL, OR OF SUBSTITUTE USE OR

PERFORMANCE, OR INCREASED COST OF OPERATION OR MAINTENANCE, OR FOR INCIDENTAL INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE. The limitation of liability contained in this section shall be effective without regard to Seller's performance or failure or delay of performance under any other term or conditions of this Agreement, including those contained in any warranty. In any case where Seller is supplying only design and components and is not responsible for erection of the equipment, all costs related to the assembly and erection of the equipment in the field shall be deemed special indirect, incidental, or consequential and shall in no case be the responsibility of Seller.

10. **DELAYS:** If Seller suffers delay in performance due to any cause beyond its control including but not limited to act of God, Pandemics, war, act or failure to act of government, act or omission of Purchaser, fire, flood, strike or labor trouble, sabotage, or delay in obtaining from others suitable services, materials, components equipment or transportation, the time of performance shall be extended a period of time equal to the period of the delay and its consequences. Seller will give to Purchaser notice in writing within a reasonable time after Seller becomes aware of any such delay. In no event shall Seller have liability to Purchaser arising out of any such delays. Seller shall be reimbursed for any additional costs it incurs as a direct result of delays caused by the Purchaser's act or failure to act.
11. **DRAWINGS/TECHNICAL DATA:** Timely performance by Seller is contingent upon Purchaser's supplying to Seller, when needed, all required technical information, including drawing approval, and all required commercial documentation. All drawings furnished by seller to Purchaser are proprietary and remain the exclusive property of Seller and are to be used by Purchaser only for the purpose of operating and maintaining the Product(s), and not for the manufacture of duplicate or similar equipment or parts by others.
12. **NONCANCELLATION:** Purchaser may not cancel; terminate for convenience, or direct suspension of manufacture, except on mutually acceptable terms.
13. **STORAGE:** Any item of Product(s) on which manufacture, or delivery is delayed by causes within Purchaser's control, or by causes, which affect Purchaser's ability to receive the Product(s), may be placed in storage by Seller for Purchaser's account and risk.
14. **SECURITY INTEREST AND INSURANCE:** Seller retains a purchase money security interest in the Product(s) and proceeds and any replacement regardless of mode of attachment to realty or other property until the full price has been paid in cash. Purchaser agrees to do all acts necessary to perfect and maintain said security interest, and to protect Seller's interest by adequately ensuring the Product(s) against loss or damage from any external cause with Seller named as insured or additionally insured.
15. **REJECTION OF GOODS:** All claims for damage, errors or shortages must be made by the Purchaser in writing within a period of thirty business days after the goods are delivered. Failure to make such claim within the stated period shall constitute an irrevocable acceptance of the goods and an admission that they fully comply with all terms, conditions, and specifications of this Agreement subject to Section 8, hereof.
16. **SUBSTITUTIONS/CHANGES:** The Seller reserves the right to make, at no cost to Purchaser, such changes in materials or designs as are, in Seller's judgment, essential for the proper operation and life of the equipment specified. The Seller further reserves the right to make improvements and/or additions to subsequently supplied Products without imposing an obligation upon itself to furnish such modifications, improvements, and/or additions on its previously supplied Products.
17. **"OR EQUAL" CLAUSE:** Whenever a material, article or piece of equipment is identified in the specifications or otherwise by reference to brand name, manufacturers or vendors' names, trademarks, catalog numbers, etc., it is intended merely to establish a general quality standard and not to require the use of a particular material, article or piece of equipment. The Seller shall have the option to select material, articles or equipment of other manufacturers and vendors which will perform adequately in accordance with the general quality standard in the opinion of Seller, provided however, that in the event the Purchaser prefers a particular brand, material, article or piece of equipment, the brand, material, article or piece of equipment of his choice will be used upon Purchaser's explicit written request to Seller and the Agreement price will be adjusted by the difference, if any, in the cost to the Seller.
18. **ASSIGNMENT:** Assignment may be made only with written consent of both parties except that Seller may assign or sublet this Agreement in whole or in part to an affiliate without Purchaser's prior written consent provided that Seller shall remain responsible for its full and proper performance by the consignee.
19. **GENERAL:** Compliance with OSHA or similar federal, state or local laws during any operation or use of the Product(s) is the sole responsibility of Purchaser.  
The laws of the state of California shall govern the validity, interpretation and enforcement of this Agreement.  
THIS AGREEMENT EXPRESSLY LIMITS ACCEPTANCE TO ITS TERMS AND CONSTITUTES NOTICE OF OBJECTION TO ANY ADDITIONAL OR DIFFERENT TERMS IN THE ACCEPTANCE OR CONFIRMATION SO AS TO PRECLUDE THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS IN ANY RESULTING CONTRACT. IT THIS DOCUMENT IS CONSTRUED AS AN ACCEPTANCE OR AS A CONFIRMATION OF AN EXISTING CONTRACT, SUCH ACCEPTANCE OR CONFIRMATION IS EXPRESSLY CONDITIONED ON THE PURCHASER'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED HEREIN.
20. **FORCE MAJEURE:** Seller delivery of Products hereunder is subject to strikes, labor, disputes, lockouts, accidents, pandemics, fires, delays in manufacture or transportation or delivery in materials, floods, severe weather, or other acts of God, embargoes, governmental actions, or any other cause beyond the reasonable control of Seller. Seller will not be liable to customer for any damages arising from Seller's delay in delivering the Products as a result of any such cause.