

TERMS AND CONDITIONS

The following are terms and conditions under which HENDERSON MARINE SUPPLY (hereinafter Henderson Marine) sells its products:

1. PRICES

Prices quoted by Henderson Marine are subject to change without notice after thirty (30) days from the day of quotation. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements, or other terms and conditions which are not part of the original price quotation. Quotations are made on the basis of the attached product sheet(s) provided by Henderson Marine. Any deviation from the attached product data sheet(s) shall be considered by Henderson Marine as a change, and additional costs, if any, shall be added accordingly.

2. QUANTITIES

The quantities indicated on the sales order are based upon the purchaser's purchase order. Henderson Marine accepts no responsibility for differences between quantities supplies and those actually used upon the purchaser's project.

3. TAXES

Prices are exclusive of all excise, sales, use, and other applicable taxes imposed by any federal, state, or municipal authority in connection with the production, processing, sale, use, shipment or delivery of products by Henderson Marine, and all such taxes shall be added to the price and paid by the buyer.

4. PAYMENT TERMS

On normally stocked items, payment terms are net thirty (30) days from the date of invoice for credit approved accounts and C.O.D. on accounts without any credit approval. As a condition of the sales agreement, a monthly service charge of the lesser of 1 ½% or the maximum permitted by law may be added to all accounts not paid by net due dates. On non-stock or special order items, payment terms are "check with order". Henderson Marine reserves the right at any time to revoke any credit extended to the purchaser for any reason, and may require full or partial payment in advance on any order. Failure to make such payment in advance shall entitle Henderson Marine to cancel such order and shall further entitle Henderson Marine to a reasonable cancellation charge. Henderson Marine will issue invoices on delivery in the case of all products sold; and if deliveries are made in installments, each shipment shall be invoiced and paid for when due without regard to other scheduled deliveries. The rights of Henderson Marine under this Paragraph are cumulative and in addition to all rights available to it at law or in equity.

5. DELIVERY

- A. Delivery shall be made in F.O.B. Henderson Marine's facilities or place of manufacture at the option of Henderson Marine. The time of delivery is the time when the product to be delivered is ready for pick up by the purchaser or its carrier. Delivery of the material/equipment to a carrier at seller's plant or any other shipping point shall constitute delivery to the purchaser.
- B. Henderson Marine shall not be liable for any damages or penalty for delay in delivery or failure to give notice of delay when such is due to the elements, acts of God, acts of the purchaser, acts of civil or military authority, fires or floods, epidemics or quarantine restriction, wars, riots, strikes, lockouts, breakdowns, labor disputes, delays in transportation, delay in delivery to Henderson Marine by its vendors, or any other cause beyond the reasonable control of Henderson Marine; and the schedule for delivery otherwise pertaining to any products shall, in such event, be considered extended by a period of time equal to the time lost because of any delay which is excusable under this clause.
- C. Ownership of products shall pass to the purchaser upon delivery thereof by Henderson Marine to the purchaser or its carrier; provided that the purchaser DOES hereby grant to Henderson Marine a security interest in the products as security for the performance by the purchaser of all its obligations hereunder together with the right, without liability, to repossess the products, with or without notice, in the event of default of any such obligation.
- D. Products held or stored by Henderson Marine for the purchaser shall be at the sole risk of the purchaser, and the purchaser shall be liable for the expense to Henderson Marine for holding or storing the products at purchaser's request.

6. CLAIMS FOR LOSSES, DAMAGE, AND SHORTAGES

All claims for loss and damage shall be made by the purchaser to the carrier. All claims for shortages or other errors shall be made in writing to Henderson Marine within forty-eight (48) hours after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and the waiver of all such claims by the purchaser.

7. SHIPMENT

- A. In the absence of specific instructions to the contrary, Henderson Marine shall select a carrier or other means of transportation in routing for shipment of its products; provided, by doing so, Henderson Marine shall not thereby assume any liability in connection with shipment, nor shall a carrier in any way be construed to be the carrier of Henderson Marine, and shall be at the purchaser's entire risk after delivery by Henderson Marine to the carrier, and all insurance and transportation charges shall be paid by the purchaser.
- B. On all shipments where prepayment shall be required, Henderson Marine shall add freight charges to the invoice together with a 10% service charge.
- C. With regard to Styrofoam brand foam, shipment is at the sole cost and risk of the purchaser. Henderson Marine shall not be responsible for damage or loss during transportation, even though shipment may be made using Henderson Marine vehicles.

8. RETURNS AND CANCELLATIONS

- A. Purchase orders accepted by Henderson Marine may be cancelled by the purchaser upon ten (10) days written notice to Henderson Marine. Such cancellation shall not apply to any products delivered or shipped by Henderson Marine during such ten-day period. No returns shall be accepted for credit or exchange without prior written approval of Henderson Marine. For any returned merchandise for which failure analysis or credit is requested, it is the policy of Henderson Marine that these items be returned against a Return Materials Authorization (RMA). To obtain an RMA number, the customer shall contact Henderson Marine or its representative and request the same.
- B. All materials returned for any reason, except factory errors, shall be subject to a minimum charge of 25% together with an offset for transportation charges in and out of the factory or warehouse. Henderson Marine shall accept only unused materials/equipment in first class, resaleable condition and of current design, which had been invoiced to the purchaser within the past twelve months. It shall be the responsibility and obligation of the purchaser to pack returned materials/equipment properly in order that it may reach Henderson Marine in good condition.
- C. All cancellations hereunder shall be subject to reasonable charges.
- D. Under no circumstances shall Henderson Marine accept any cancellation or return of materials/equipment manufactured exclusively to the specifications of purchaser.

Name of purchaser

Signature

Date

9. WARRANTY AND REPAIR POLICIES

- A. In lieu of any warranty or merchantability or fitness and all other warranties, whether expressed or implied, Henderson Marine hereby warrants that all goods sold by Henderson Marine are free from defects in materials and workmanship. Henderson Marine's obligations under this warranty (a) are conditional upon inspection of the goods when received by the original purchaser and notification to Henderson Marine of any apparent defects within thirty (30) days or receipt of shipment, (b) are limited to repairing or replacing (at Henderson Marine's option) any goods which are returned to Henderson Marine within twelve months after delivery to the original purchaser and which upon Henderson Marine's examination prove to be defective in materials or workmanship, and (c) do not apply to any goods which have been subjected to misuse, neglect, accident, or improper installation or application, or have been repaired or substantially altered after delivery by Henderson Marine. This warranty does not apply to components which are normally consumed in operation or which have a normal life inherently shorter than one year.
- B. Purchaser shall pay all costs of inspection in testing goods returned under the warranty. Henderson Marine shall reimburse purchaser for transportation charges for the return of goods as to which Henderson has an obligation under this warranty.
- C. No goods sold by Henderson Marine shall be considered defective or non-conforming if they satisfactorily fulfill any performance requirements given to Henderson Marine by the purchaser, or any written or verbal agreement between Henderson Marine and the purchaser, or if they are in accordance with samples approved by the purchaser. The liability of Henderson Marine under this warranty shall not in any case exceed the costs of correcting the defects as herein provided and upon the expiration of the warranty period, all such liability shall terminate. Under no circumstances is the purchaser authorized to perform any repairs or modifications to the materials/equipment without written authorization from Henderson Marine. The foregoing shall constitute the exclusive remedy of the purchaser and the exclusive liability of the seller.

10. WEIGHTS AND DIMENSIONS

The weights and dimensions shown on the sales order or on the product data sheets are approximate. They are furnished as a convenience and not as an engineering function. No liability whatsoever will be assumed by Henderson Marine for damage or costs based on customer's use of dimensions.

11. LIMITATION OF LIABILITY

- A. For any claim arising out of this contract, Henderson Marine, under no circumstance, shall be liable for special or consequential damages including, but not limited to, loss of profits or revenues, loss of use of the materials/equipment, cost of capital, costs of reinstallation of products, cost of substitute equipment, facilities or services, down time cost, or claims of customers of the purchaser for such damages, and under no circumstances, shall Henderson Marine be liable to the purchaser for damages in excess of the price of the goods sold hereunder.
- B. To the extent the items covered by this purchase contract are manufactured pursuant to designs originated or otherwise furnished by the purchaser, purchaser warrants and guarantees that the items covered under this purchase contract shall be free and clear of infringement of all valid United States and/or foreign patents, trade marks, or copyrights. Purchaser agrees, therefore, to defend, indemnify, and hold Henderson Marine harmless against any and all liability, loss and expense by reason of any claims, suits, or actions which allege such infringement and which purchaser agrees to compromise or defend.

12. SUBSTITUTIONS AND MODIFICATIONS

Henderson Marine reserves the right to make substitutions and modifications in the specifications of materials/equipment, provided that such substitutions or modifications will not materially affect their performance.

13. GENERAL

All purchase orders are subject to acceptance by Henderson Marine in writing signed by an authorized agent of Henderson Marine, and dispatched to the purchaser by Henderson Marine; and, any contract made hereunder shall be governed by and be construed in accordance with the laws of the State of California. This contract is not assignable, and any attempt to assign any rights, duties or obligations arising hereunder shall be void.

14. MODIFICATION

The foregoing terms and conditions shall prevail and govern Henderson Marine's sale of materials/equipment notwithstanding any variation from the terms and conditions of any order submitted by purchaser for any products sold hereunder. Deviations from these terms and conditions are not valid unless confirmed in writing by an authorized agent of Henderson Marine.

15. FAIR LABOR STANDARDS ACT

Henderson Marine hereby certifies that the goods sold hereunder have been represented to have been produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938 as amended.

16. ATTORNEY'S FEES

If any action at law, or in equity, is necessary to enforce or interpret the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

17. WAIVER

A failure of Henderson Marine to enforce at any time any of the provisions of this contract, to exercise any election or option provided herein, or to require at any time performance by purchaser of any of the provisions hereof shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this agreement or any part thereof, or the right of Henderson Marine thereafter to enforce each and every such provision.

18. VENUE

Any litigation shall be initiated and conducted in either Contra Costa County or Sonoma County at the sole option of Henderson Marine.

Name of purchaser

Signature

Date