

TRELLEBORG MARINE SYSTEMS



To: City of Key West
 Attn: Terrence Justice
 Tel: 305-809-3943
 Email: tjustice@cityofkeywest-fl.gov
 Reference: **Marine Fender Purchase and Refurbishment**

From: Trelleborg Marine Systems
 Sender: Alan Dinges
 Tel: +1 (540) 955 7153
 Email: alan.dinges@trelleborg.com
 TMS Ref: USA-29677-17
 Date: March 16, 2017
Revision:

We are pleased to offer the following materials for the above referenced project:

Item	Qty	Description	U/M	Unit	Total
1	5	Trelleborg Seaguard Marine Fender 6 ft x 16ft Long - Extra High Capacity (Black)	EA	\$20,465	\$102,325
2	5	Trelleborg Seaguard Marine Fender 6 ft x 16ft Long - EHC (Black) Refurbishment - includes new end fittings and reconditioning of outer skin to like new condition	EA	\$6,035	\$30,175
3	20	1-3/4" BTA Shackle - HDG (Domestic)	EA	\$175	\$3,500
4	10	1-3/4" Open Link Chain - HDG (Domestic)	EA	\$645	\$6,450
5	1	Estimated Freight to Key West - one way for new fenders and roundtrip for refurbishments	Lot	N/A	\$17,650
				Offer Total	\$160,100

SPECIAL TERMS & CONDITIONS

Price:	In USD.
Delivery:	To be agreed. Generally 6-8 weeks after approval of submittals.
Origin:	Fender USA - Hardware USA
Validity:	Price valid for 30 days subject to reconfirmation at the time of order placement.
Payment:	To be agreed
Invoicing:	Against each shipment. If required, partial deliveries to be allowed.
Shipment:	All materials will be packaged and suitable for shipment via FCL or LCL. Unloading at destination shall not be the responsibility of Seller unless otherwise agreed.
Penalties etc:	Prices offered specifically excludes any form of penalties, liquidated damages, bank guarantees etc. If the same is required, must be discussed can be agreed subject to Trelleborg corps acceptance and may result in additional cost.
Taxes etc:	No local or usage taxes included.
Other:	All material, performance, dimensions etc are according to TRELLEBORG MARINE SYSTEMS standards unless specifically agreed otherwise.

Sincerely,

Alan Dinges - Regional Sales - USA
 Trelleborg Marine Systems USA, Inc.



Trelleborg Marine Systems Berryville, Inc.
 532 Jack Enders Boulevard, Berryville, VA 22611. USA.
 Tel: (540) 667-5191 Fax: (540) 667-7987 Email: tms.americas@trelleborg.com





Terms and Conditions

1. Applicable Law and Jurisdiction

These general terms and conditions apply to all proposals and quotations submitted by Trelleborg Marine Systems Berryville, Inc. (hereinafter referred to as "Seller"), to all purchase orders received by Seller, and to all goods and services sold by Seller, except as otherwise specifically provided in a document signed by Seller. This sale and any sale resulting herefrom consists only of these terms and conditions and those in other documents referenced herein or attached hereto or in a document subsequently signed by Seller and referencing this transaction (all of which constitute the "Agreement"). The Agreement shall be governed, construed and enforced under the laws of the State of DELAWARE including the Uniform Commercial Code in force on the initial date of the Agreement ("UCC"), except as provided herein. The U.N. Convention on the International Sale of Goods shall not apply. Any services to be provided hereunder, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units), shall be considered ancillary to a sale of goods and the UCC shall apply to all goods and services to be provided hereunder ("Goods"). THE COURTS OF DELAWARE SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT. The parties stipulate to the convenience of DELAWARE courts as to all litigation. Any declaration of unenforceability of a provision shall be as narrow as possible and shall not affect the enforceability of the other provisions.

2. Formation, Integration and Modification

A. The Agreement incorporates all previous Seller quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of Seller's quotation (according to its terms), Seller's actions in reliance on Buyer's oral acceptance of a written or oral quotation, or Buyer's receipt of the Goods, will constitute a binding contract under the terms of the Agreement. The Agreement is subject to Seller's revocation or cancellation without liability until approved by Seller at its home office. Notice of such approval may be furnished to the Buyer by an acknowledgment, shipment, or other form of express approval.

B. An order submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with these Terms and Conditions), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other writing. Seller shall not be deemed to have enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions.

C. The Agreement is a final, complete and exclusive statement of the parties' Agreement. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in writing and signed by Seller's authorized employee. Seller may correct unilaterally any mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or customs in the trade shall not constitute a modification or waiver by Seller of any right by Seller.

D. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be for the benefit of Seller's agents, employees, contractors, and suppliers. If any provisions are determined to apply to third parties, all other provisions shall also apply.

3. Prices, Payment and Risk of Loss

A. Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices contained in individual written quotations or proposals are firm only for a period of 30 days from the date of the quotation. Prices do not include taxes. Buyer shall pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt therefrom. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt all invoices rendered by Seller for any such items Seller may pay and for the Goods.

B. This Agreement is for a shipment contract and the Goods shall be delivered EXW Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary.

C. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, and manufacturing required by changes requested by Buyer after the date of any quotation.

D. All amounts not paid to Seller when due shall incur a carrying charge of 0.5% per week to the extent allowed by law and otherwise at the highest written contract rate allowed by law.

4. Delivery

Shipping dates are estimates based on Seller's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller's books. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment, and other conditions as specified in the Agreement, and of all drawings, information and approvals necessary to provide the Goods and to grant any credit proposed in the Agreement.

5. Cancellation

Cancellation charges will be applicable from the time the cancellation advice is received in writing. Assumes Seller will retain title / possession of all project related materials / goods which are unfinished (work in progress) at the time cancellation advice is received in writing. The following fixed cancellation charge schedule is applicable after contract formation.

Week 1 to 2 – 25% of PO value (including Additional/Optional Items)

Week 3 to 4 – 50% of PO value (including Additional/Optional Items)

Week 5 onwards – 100% of PO value (including Additional/Optional Items)

6. Delay of Shipment or Performance Excused for Various Reasons

A. If shipment of any item or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the item at the place of manufacture at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for an item shall be due and payable 30 days after Buyer is notified that the item is ready for shipment. If Seller is unwilling to accommodate Buyer by holding such item, Buyer shall accept shipment immediately.

B. Seller shall not be in default because of its delay or failure to deliver or perform resulting, in whole or in part, from: (i) any embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order, or (ii) the lack of usual means or transportation, fires, floods, explosions, strikes or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which interfere with, or render substantially more burdensome, Seller's production, delivery, or performance.

7. Inspection, Testing and Rejection

A. If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other procedures have been specified in the Agreement.

B. All drawings, specifications, technical documentation, samples, prototypes and Goods shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven days of receipt or other reasonable time established by Seller. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non conformities upon which Buyer will rely to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED.



ISO 9001:2008
ISO 14001:2004

Trelleborg Marine Systems Berryville, Inc.

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8. General Express Warranties

- A. Seller Warranties are outlined on Schedule 1 to this Agreement which is entitled "STANDARD WARRANTY POLICY".
- B. Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is non material.
- C. Seller's warranties shall apply only if the Goods: (i) have been installed, maintained, and used in conformity with instructions and recommendations furnished by Seller from time to time, if any; (ii) have not been subjected to misuse, movement of the structure, physical abuse, installation error, negligence or accident; and, (iii) have not been altered or repaired by persons other than Seller in a manner, which, in the judgment of Seller, adversely affects the condition of the Goods. It is Buyer's responsibility to determine suitability of the Goods for Buyer's use and Buyer assumes all risk and liability associated therewith.
- D. If any of the provision of the STANDARD WARRANTY POLICY conflict with the provisions of this Agreement, the terms and conditions of STANDARD WARRANTY POLICY shall prevail.

9. Disclaimer and Limitation of Express Warranties

There are no express warranties other than those contained in the Agreement. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines, or procedures unless specifically contained in the Agreement.

10. Remedy and Limitation of Seller's Liability

A. Defective or non-conforming Goods or parts thereof discovered during the one-year warranty period shall be repaired or replaced by Seller without any additional charge and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller determines to be not in conformity with the express warranties contained herein. If Seller elects, Seller may, upon return of such Goods and making a determination of non conformity or defect, keep the Goods and refund the purchase price. Buyer's remedies shall be limited exclusively to those provided in this section. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new warranty except the warranty period provided for herein shall be extended by the length of any period from the date the defective or non conforming Goods are received by Seller until the date repaired or replacement Goods are delivered to Buyer.

B. Buyer must contact Seller requesting warranty coverage plus a return authorization number and other instructions for the return of Goods to Seller or other instructions. If requested by Seller, Buyer shall issue a new purchase order or amendment to Seller for replacement Goods, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer must comply with Seller's return instructions (including return of the Goods) within 30 days or the claim shall be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying, and packing returned Goods. Goods returned without compliance with the above procedures shall be returned to the Buyer at Buyer's cost.

11. Disclaimer of Implied Warranties

SELLER DIS-CLAIMS ALL IMPLIED WARRANTIES (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in this Agreement.

12. Indemnification

Buyer shall indemnify Seller from all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of the use, storage, sale or regulations or other disposition of the Goods and supplies or materials used in connection with the Goods if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller.

13. Consequential, Incidental, and Other Damages

BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations. Any legal inability to limit or restrict the right of Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder, and under no circumstance shall Buyer recover more than the purchase price.

14. Proprietary Information

A. Buyer acknowledges that any information disclosed to Seller has not and will not be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure. Otherwise, Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement.

B. All proposals, plans and other information furnished by Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any third party or used by Buyer except as may be necessary for the selection or use of the Goods.

C. Any invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller.

15. United States Government Regulations

Buyer shall not engage in any transaction with respect to the Goods which violates any statute or regulation of the United States of America.

Purchaser's Acceptance

The above terms and conditions are hereby accepted and agreed to.

Trelleborg Marine Systems Berryville , Inc.

Company Name -----

By -----

By -----

(Authorized Signature/Name of Purchaser)

Date -- -----



ISO 9001:2008
ISO 14001:2004

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