



Terms and Conditions

These terms and conditions apply to all services or products supplied by HATTON MARINE AND INDUSTRIAL REPAIR, INC. ("Seller"), with its principal place of business located at 4735 Shilshole Avenue NW, Bldg. A, Seattle, WA, 98107, to or for any person, including its successors or assigns ("Purchaser"), and all bids or contracts for such supply of services or products. These terms and conditions supersede any and all provisions of Purchaser's order relating to this Work (as defined below) to the extent that such provisions are inconsistent with, differ from, are additional to, or limit these terms and conditions in any way.

1. **Work.** For purposes of these terms and conditions, the term "Work" shall mean any services or Products (as defined below) supplied or required to be supplied by Seller to or for Purchaser under contract or otherwise, including without limitation items identified in the "description" provision of any contract for the supply of any services or products by Seller to or for Purchaser.
2. **Price.** Price for the Work shall be per Seller's standard rates and charges on a time and materials basis, unless Seller has expressly agreed otherwise in a writing signed by Seller. Price quotations/estimates are made in good faith based on the general description of the Work, but are not guaranteed or binding on Seller and all prices shall be based on the actual Work performed and/or Products supplied, in accordance with Seller's standard rates and charges.
3. **Changes.** If the Work involves installation of Products or repair work or other services, Seller's scope of work shall be limited to that expressly stated in writing by Seller and any expansion of or additional Work shall be subject to Seller's approval by change order acceptable to Seller. Purchaser agrees that Seller shall be compensated at Seller's standard rates and charges for any different or additional work requested verbally or in writing by Purchaser, or for additional work or re-work necessitated by hidden or unforeseen conditions discovered during the course of the Work, or due to disruptions or delays resulting from other work performed by Purchaser or others.
4. **Title and Risk of Loss.** Title to the Work and risk of loss thereof shall pass to Purchaser upon delivery. Unless otherwise expressly agreed in writing, delivery and completion of any service shall be the date the service is provided or, if invoiced, the date of first invoice for such service presented to Purchaser by mail or other means. Delivery of Products shall be F.O.B. Seller's facilities at the address set forth above. To the extent Seller arranges the shipment it does so as Purchaser's agent only. Any shipment of any Product shall be F.O.B. Seller's facilities at the address set forth above, and in all cases the cost of any such shipment shall be borne by Purchaser. Delivery (and/or completion) dates are good faith estimates only and shall not be deemed to represent fixed or guaranteed dates.
5. **Manufacturer's Warranty.** Most parts, materials, products, equipment, and other items ("Products") Seller provides in the course of the Work are warranted to Purchaser by the manufacturer of the Products. Copies of such warranties are supplied with the Product or are available from the manufacturer. In regards to such Product(s), Purchaser's sole remedy shall be under the manufacturer's warranty.
6. **Seller's Warranty.** Seller warrants to Purchaser that the Work shall be free of defects in material and workmanship for 90 days from the date of delivery (the "Warranty Period"). Seller's warranty under this paragraph 6 applies to the original Purchaser only and is not assignable.
7. **Matters Not Warranted.** Seller shall not be responsible for and the warranty in paragraph 6 excludes any defects in Products manufactured by any person other than Seller, any defects in Purchaser's equipment undiscovered by Seller during diagnoses or troubleshooting, any non-conformities or damage caused by other than normal and proper usage, or contributed to by improper maintenance, incorrect installation by Purchaser, misuse or abuse, alterations made without the written consent of Seller, faulty repairs or other work made by any person other than Seller, or defects in or arising from materials supplied or designs stipulated by Purchaser.
8. **Disclaimer.** EXCEPT AS PROVIDED IN THESE TERMS AND CONDITIONS, SELLER HEREBY DISCLAIMS AND PURCHASER HEREBY WAIVES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION WORKMANLIKE SERVICE, SEAWORTHINESS, THE DESIGN OR CONDITION OF THE WORK, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.
9. **Remedy.** Purchaser's remedy for matters covered by the warranty in paragraph 6 shall be limited to, at Seller's option, repair or replacement by Seller of such part of the Work as Seller deems necessary to cure the defect or refund of the purchase price of the defective Work. Unless the warranty work is performed by Seller's employees at Seller's normal repair facilities during regular business hours, Purchaser shall bear all expenses relating to the warranty work, including without limitation, transportation, overtime, meals and lodging. All removed defective parts shall be returned to and be the property of Seller. THE FOREGOING SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY ARISING FROM OR RELATING TO THE WORK; IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER ON ANY OTHER BASIS OR UNDER ANY OTHER THEORY, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE, MISREPRESENTATION OR OTHER TORT (INCLUDING STRICT, STATUTORY, OR PRODUCT LIABILITY) OR OTHERWISE.
10. **No Consequential Damages.** UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DELAY DAMAGES, EXTRA EXPENSE, LOST PROFITS, LOSS OF USE, LOSS OF HIRE AND/OR BUSINESS INTERRUPTION, EVEN IF THE POSSIBILITY OF SUCH DAMAGES MAY HAVE BEEN FORESEEABLE BY ANY PARTY.
11. **Timely Claim.** Seller's warranty under paragraph 6 is void and is of no force or effect with respect to any defect unless within 30 days following expiration of the Warranty Period (a) Purchaser submits a claim to Seller in writing that fully describes the defect; and (b) Seller receives such writing at its address set forth above.
12. **Limitation of Liability.** THE MAXIMUM TOTAL LIABILITY OF SELLER (INCLUDING SELLER'S EMPLOYEES) TO PURCHASER AND/OR ANY THIRD PARTIES ARISING FROM OR RELATING TO THE WORK, FOR ANY AND ALL CLAIMS AND/OR CAUSES OF ACTION, SHALL NOT EXCEED A CUMULATIVE SUM EQUAL TO THE AMOUNT PAID BY PURCHASER FOR THE WORK.
13. **Force Majeure.** Seller shall not be liable for any failure or delay in the Work resulting from any cause beyond the reasonable control of Seller or any supplier of Seller; or from compliance by Seller with any regulations (including import and export regulations), orders, acts, instructions or priority requests of any national, state or municipal government, or any agency thereof, or any civil or military authority; or from acts of God, fires, or other casualty or accident, labor disputes, strikes, lockouts, factory shutdowns or altercations, embargoes, currency restrictions, riots or other disorders, delays or shortages in transportation or inability to obtain in sufficient quantity fuel, power, labor, manufacturing facilities or materials or other supplies from the usual sources of Seller.
14. **Indemnity.** Purchaser agrees to indemnify, hold harmless and defend Seller against any and all liabilities, claims, demands, suits, losses, costs, damages and expenses (including reasonable attorneys' fees and costs) which Seller may sustain or incur arising out of any claim based on breach of warranty, negligence or product liability, including strict liability, and whether due to negligence of Seller or otherwise for injury to or death of persons or damage to property arising out of or in any way connected with the sale or use of the Work, or incorporation of the Work into any structure or vessel, or the sale or use of such structure or vessel.
15. **Seller Remedies.** Purchaser acknowledges and agrees that Seller's obligation to provide the Work and Purchaser's obligation to pay Seller for the Work are bilateral and interdependent, and it shall be a material breach by Purchaser if it fails, for any reason or no reason, to make timely and full payment to Seller for all Work, as provided herein. Accordingly, Purchaser expressly agrees that (a) Seller shall be entitled, at Purchaser's sole risk and expense, to suspend or cease performance of Work in the event Purchaser fails to fully and timely make payments to Seller as provided herein; and (b) Seller's exercise of such suspension and/or cessation rights shall not be a breach of the parties' agreement. Purchaser hereby waives and agrees to indemnify, hold harmless and defend Seller from and against any and all claims against Seller for loss or damage arising from any such suspension or cessation of Work by Seller. Exercise of said suspension and/or cessation rights shall not be an exclusive remedy and Seller reserves all other rights or remedies it may have for Purchaser's late or less than full payment, or other breach, whether under these terms and conditions or otherwise at law or equity.
16. **No Assignment.** Purchaser shall not be entitled to assign its rights or obligations hereunder without the prior written consent of Seller.
17. **Third Party Beneficiaries.** No person not a party to this Agreement is an intended beneficiary hereof, and no person not a party to this Agreement shall have any right to enforce any provision of this Agreement.
18. **Severability.** If any term or provision of these terms and conditions is held by any court or other competent authority to be illegal or unenforceable, such court or authority is hereby authorized to amend such term or provision so that it will be enforceable to the fullest extent permitted by law and the remaining terms and provisions shall not be affected.
19. **Successors and Assigns.** Except as otherwise provided herein, these terms and conditions are binding upon and shall enure to the benefit of the parties' respective successors and permitted assigns.
20. **Miscellaneous.** This Work and these terms and conditions shall in all respects be governed, construed and interpreted by the general maritime law of the United States or by the laws of the State of Washington in the event there is no applicable general maritime rule of law. Venue of any dispute arising out of or relating to the Work or these terms and conditions shall, at Seller's option, be in courts of competent jurisdiction in Seattle, Washington. **Seller shall invoice Purchaser for Work, with payment to be made without offset or deduction net 20 days after the date of Seller's invoice.** All outstanding balances shall accrue interest at 18% per annum or the maximum rate permitted by law, whichever is lower. Purchaser shall be responsible for all sales, use, excise, value added, and other taxes and duties for the Work. Purchaser agrees to pay to Seller all attorneys' fees and costs Seller incurs to enforce these terms and conditions and/or to collect any balance due from Purchaser, including without limitation, all fees and costs to arrest and foreclose against Purchaser's vessel. Any item left at Hatton will be assessed applicable storage fees.
21. **Entire Agreement.** Except to the extent the parties otherwise agree in writing, these terms and conditions are the exclusive expression of the understanding of the parties in connection with the Work.