



# Marmon Utility LLC

QUOTE NO.  
**00023518**



**FILE**

REV. 1 REV DATE 01/05/2011

SALES REPRESENTATIVE <b>D'Ewart Representatives LLC, 425-485-6545</b>	CUSTOMER REQUEST NO.	REQUEST DATE <b>09/14/2010</b>	EXPIRATION DATE <b>02/04/2011</b>
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PRICE TERMS <b>Escalation/De-Escalation</b>	F.O.B. <b>FOB Factory</b>	FREIGHT PAYMENT <b>Prepaid &amp; Charge</b>	PAYMENT TERMS <b>Net 30 Days</b>
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CUSTOMER (000644-000) <b>PacifiCorp Accounts Payable Department P.O. Box 3040 Portland, OR 97208-3040</b>	SHIP TO (000644-000) <b>PacifiCorp TBD Portland, OR 97208-3040</b>
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ITEM	QUANTITY	PRODUCT NUMBER / DESCRIPTION	UNIT PRICE	EXTENSION (\$)
<p>This quote does not include -0+5% tolerance on cable lengths nor escalation/de-escalation calculation.</p> <p>Prices furnished are based upon the preceding month's average published price for MW US Transaction aluminum ingot per pound and Comex hG 1st Pos copper per pound as published each month in the McGraw Hill publication "Metals Week". In the event of changes in the base metal prices, all quoted prices and unshipped order balances will be adjusted at the time of shipment, based on the preceding month's average price, to reflect a change in the price of the finished product.</p> <p><b>** MINIMUM MANUFACTURING QUANTITY QUOTED **</b></p> <p><b>** 6 WEEK LEAD TIME **</b></p> <p><b>** FREIGHT TERMS ARE PREPAID &amp; CHARGE **</b></p> <p>Quoted by Maret Berkowitz mberkowitz@Hendrix-wc.com TEL (603) 249-1235 FAX (603) 673-1497</p> <p>TERMS &amp; CONDITIONS OF SALE Marmon Utility</p> <p>TERMS &amp; CONDITIONS OF SALE MARMON UTILITY LLC (MARMON UTILITY)</p> <p>1. Acceptance; Agreement. This document, including these Terms and Conditions (collectively "Agreement"), supersedes all other agreements, oral or written, and all other communications between the parties suggesting additional or different terms. It represents the final and complete understanding of the parties and may be amended or canceled only by written agreement signed by both parties. This Agreement expressly limits acceptance to these terms; no order shall have any force or effect until acknowledged in writing by Marmon Utility; and any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the terms hereof is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to the terms and conditions in this Agreement. Unless otherwise stated herein, Buyer's receipt of any portion of the goods ("Goods") shall constitute acceptance of this Agreement and all of its terms and conditions, unless Buyer immediately returns all such Goods.</p> <p>2. Terms of Payment. Payment terms are net 30 days from the invoice date. All late payments will be subject to a late charge of US prime rate plus 2% annualized. Shipments and deliveries shall at all times be subject to the continuing approval of Marmon Utility Credit Department, upon whose information Marmon Utility may decline to make shipment or may require payment in advance or other arrangement to assure due payment.</p> <p>3. Prices. Prices, including delivery terms, are subject to change without notice to reflect Marmon Utility's prices at time of shipment and increases in labor or other costs. Marmon Utility reserves the right to correct any obvious errors in specifications or prices. Minimum invoice charge is \$500. All amounts owed to Marmon Utility shall be paid without abatement, deduction or set off. 4. Delivery and Transportation Terms. Shipments invoiced at 5,000 feet or more for cable or \$3,000 or more of accessories are sold F.O.B. shipping point, freight prepaid and allowed, where within the continental United States. Shipments of less than 5,000 feet (\$3,000 for accessories) are sold F.O.B. shipping point, with shipping and handling charges added to the invoice.</p> <p>5. Cancellation. Acceptance by Marmon Utility of Purchaser's written order constitutes a binding contract between the parties which, except as otherwise specifically provided herein, may not be canceled or modified without the parties' mutual consent. In the event Purchaser refuses to accept goods ordered it will be</p>				



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<p>liable for Marmon Utility' cancellation charges which shall not exceed the purchase price of the undeliverable goods. Cancellation by Purchaser of ordered wire and cable goods will result in cancellation charges derived from the below formulae: a. A minimum charge of 20% of the sales price will be paid by Purchaser for cancellation of goods scheduled for fabrication 90 days or more subsequent to the date Marmon Utility receives notice of cancellation. b. A minimum charge of 50% of the sales price will be paid by Purchaser for cancellation of goods scheduled for fabrication less than 90 days subsequent to the date Marmon Utility receives notice of cancellation.</p> <p>In the event the above formulae are inadequate to cover costs incurred by Marmon Utility incident to fabrication and prior to its receipt of notice of cancellation, Purchaser shall reimburse Marmon Utility all such costs incurred. Additionally, completed or partially completed units fabricated pursuant to order shall be paid for by Purchaser at 100% of the per unit price.</p> <p>Marmon Utility</p> <p>6. Taxes. Prices do not include any sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any federal, state, or local law, rule or regulation concerning the Goods sold hereunder or the manufacture or sale thereof. If Marmon Utility pays any such taxes or assessments, Buyer shall, upon demand, reimburse Marmon Utility for such amounts.</p> <p>7. Risk of Loss. All risk of loss or damage to Goods shipped hereunder shall pass to Buyer upon delivery thereof to Buyer, to its designated agent, or to a carrier for delivery to Buyer, whichever occurs first. Unless otherwise stated, all shipments will be made F.O.B. point of manufacture. 8. Delivery. All shipping dates are estimates and are based upon prompt receipt of all necessary information. Delays in securing Buyer's approval of necessary specifications or samples of products and materials shall, if Marmon Utility so chooses, extend the date of delivery. Marmon Utility shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays in delivery.</p> <p>9. Warranties and Limitations on Warranties – Hendrix Brand. a) Marmon Utility expressly warrants that the Goods (i) will conform to the descriptions and specifications incorporated herein within the guidelines established herein and (ii) will be free from defect in material and workmanship for a period of one year after shipment. THESE ARE MARMON UTILITY' ONLY WARRANTIES. MARMON UTILITY MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY MARMON UTILITY AND EXCLUDED.</p> <p>b) If Buyer notifies Marmon Utility in writing within the warranty period of a defect in material or workmanship in any Goods or part thereof sold hereunder, and if Marmon Utility determines, after appropriate tests and inspection, that such goods or part thereof are not in conformity with the warranty given hereunder, Marmon Utility will repair, replace, or refund the purchase price, at its sole option. This shall be Buyer's exclusive remedy for Marmon Utility' liability hereunder. Any claims not made within the warranty period are deemed waived by Buyer.</p> <p>c) Marmon Utility' liability to Buyer or anyone claiming through or on behalf of Buyer, with respect to any claim or loss arising out of this transaction or alleged to have resulted from an act or omission of Marmon Utility, whether negligent or otherwise, and whether in tort, contract, or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the Goods or part thereof with respect to which such liability is claimed or, where appropriate and at the option of Marmon Utility, to replacement of the Goods or part thereof. In no case will Marmon Utility be liable for any bodily injury, death, or property damage resulting from or in any way arising out of the goods or their sale, use, or manufacture. IN NO EVENT SHALL MARMON UTILITY BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF THIS TRANSACTION.</p> <p>d) If Buyer or any other person, without the prior written consent of Marmon Utility, repairs or modifies all or part of the Goods, or if the Goods are not installed or used in compliance with Marmon Utility' directions, this warranty shall be void.</p> <p>10. Warranties and Limitations on Warranties – Kerite Brand.</p> <p>Marmon Utility</p> <p>a) WARRANTY - Marmon Utility LLC warrants solely to the Purchaser that any wire or cable of its own manufacture ("Product") and supplied to the Purchaser will be free from defects in material and workmanship provided the wire and cable are employed under conditions contemplated and covered by the design specifications, and provided further that the wire and cable are installed, spliced, terminated, maintained, and operated in accordance with Marmon Utility LLC's recommended standards and procedures.</p> <p>b) If a Product fails electrically while in service, Purchaser shall notify Marmon Utility LLC within (5) days of the discovery of such failure, and shall permit a representative of Marmon Utility LLC a reasonable opportunity to inspect the Product. If it is mutually determined by Marmon Utility LLC and Purchaser that the</p>				



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		<p>failure is the result of defective material or workmanship, Marmon Utility LLC's sole responsibility under this Warranty shall be to repair or replace the defective Product, the choice of which will be Marmon Utility LLC's option. If Marmon Utility LLC chooses to replace the defective Product, the new Product will be delivered free of charge to the delivery point called for in the original order.</p> <p>c) Marmon Utility LLC will not be responsible for any damage or failure caused by Purchaser or any third party, including without limitation, Acts of God.</p> <p>d) Marmon Utility LLC will not be responsible for any defects or repairs to, or replacement of, adjacent or connected equipment to which the Product may supply electrical power or from which it may take electrical power, or with which it may, in any manner, be associated. Marmon Utility LLC will not be responsible for any incidental or consequential damages whatsoever, either direct or indirect, resulting from a failure of the Product.</p> <p>e) THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.</p> <p>11. Indemnification a) If the Goods are manufactured in accordance with specifications or other directions provided by Buyer, Buyer shall indemnify, defend, and hold harmless Marmon Utility against all claims, losses, liabilities, and expenses (including attorneys' fees), which Marmon Utility may incur or become liable to pay with respect to such Goods, including (without limitation) claims relating to patent, trademark, copyright infringement, or unfair competition, claims of non-compliance with any federal, state, or local law or regulation, and any other claim of any third party which relates to or in any way arises out of such specifications or other directions provided by Buyer.</p> <p>b) Buyer shall also indemnify, defend, and hold harmless Marmon Utility against all claims, losses, liabilities, and expenses (including attorneys' fees), which Marmon Utility may incur or become liable to pay which relate to or in any way arise out of Goods subjected to: (i) improper installation or storage; (ii) accident, damage, abuse, or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Goods.</p> <p>12. Patents. Except as provided in Section 10A with respect to Goods manufactured in accordance with specifications or directions provided by Buyer, and provided Buyer has made all payments due hereunder, Marmon Utility shall defend, at its expense, any suit or proceeding brought against Buyer based upon any claim that the Goods or any part thereof infringe any United States patent issued as of the date of Marmon Utility's quotation and shall pay any damages and costs awarded therein against Buyer, provided that Marmon Utility is notified promptly in writing of such claim and is given full authority, information and assistance by Buyer to defend or settle the suit. If the</p> <p>Marmon Utility</p> <p>Goods or any part thereof are deemed to infringe any such patent, Marmon Utility shall, at its expense and sole option either; procure for Buyer the right to continue using said Goods or part; replace them with non-infringing Goods or parts; modify them so they become non-infringing; or remove them and refund the purchase price for them.</p> <p>13. Force Majeure. Marmon Utility shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control, including without limitation: an act of God; war; civil commotion; sabotage; labor dispute, explosion; fire; accident; power or equipment failure; inability to obtain suitable or sufficient labor, fuel, power, or material; delay of carrier; embargo; or any law, ordinance, rule, or regulation, whether valid or invalid, including but not limited to priority, requisition, allocation, or price control. 14. Default. If Buyer is in default or commits a breach of any of the provisions of this Agreement, Marmon Utility shall have the right to cease work hereunder immediately. Further, if Buyer fails to cure such default or breach within ten (10) days after written notice thereof from Marmon Utility, Marmon Utility may terminate this Agreement by written notice to Buyer. If Buyer cures such default or breach within said ten (10) day period, this Agreement shall remain in effect, except for any adjustments to price, delivery terms, or other provision hereof which are necessary or appropriate because of any permitted cessation of work by Marmon Utility. 15. Storage. If Buyer is unwilling to accept shipment of the Goods on the agreed shipping date, Marmon Utility may, at its option, place them in storage and bill Buyer for reasonable storage charges. In such case, risk of loss shall pass to Buyer when the Goods are placed in storage, and the date the Goods are placed in storage shall constitute the date of shipment for purposes of beginning the warranty period. 16. Material Return Policy. Marmon Utility reserves the right to refuse return requests of any material. All material returns must be pre-authorized by Marmon Utility, be in original resalable condition, and have a written "Return Authorization" issued. A minimum Restocking Fee of 25% of the original invoice amount will be charged for all returns. The returning party is responsible for all prepaid freight costs back to the Marmon Utility point of origin. 17. Waiver. Failure of Marmon Utility at any time to require Buyer's performance of any obligation under this Agreement shall not affect Marmon Utility's right to require performance of that obligation. Any waiver by Marmon Utility of any breach or default hereunder must be in writing and shall not be construed to be a waiver of any continuing or succeeding breach or default, a waiver or modification of this provision itself, or a waiver or modification of any right under this Agreement. 18. Assignment. Buyer shall not assign this Agreement or any monies due or to become due hereunder, without Marmon Utility's prior written consent, and any attempted assignment without Marmon Utility's prior written consent shall be void and, at Marmon Utility's option, grounds for termination of this agreement. 19. Governing Laws. This Agreement shall be construed in accordance with the laws of the jurisdiction in which is located the plant of Marmon Utility producing the Goods, as indicated on the front hereof.</p>		

