

## Milbank Manufacturing Co. | Terms and Conditions to Purchase Contract

**1. Acceptance; Entire Agreement:** These Terms and Conditions of Purchase (“Terms and Conditions”) and any purchase order issued thereunder (each, a “Purchase Order”) constitute Buyer’s offer to purchase certain products and/or services from Seller. The Terms and Conditions, any applicable Purchase Order, and, where in existence, any Master Supply Agreement between Buyer and Seller (“MSA”) shall collectively (i) form the sole and final agreement (the “Agreement”) between the parties with respect to the contents thereof, (ii) supersede all prior negotiations, discussions, and dealings between the parties, and (iii) constitute the entire agreement between Buyer and Seller; provided, however, to the extent that any term or condition of these Terms and Conditions, any Purchase Order, or any MSA conflict with the terms or conditions of any other document making up the Agreement, the terms and conditions which provide the most protection or benefit to Buyer shall control. No change, modification or waiver of any part of the Agreement shall be binding upon the Buyer unless it (a) is made in writing and signed on its behalf by a duly authorized representative of Buyer and (b) specifically references the Agreement.

**2. Delivery; Inspection; Rejected Products:** Time is of the essence. If a delivery of any products or services is not expected to be made on-time, Seller will notify the Buyer and will take all reasonable steps at Seller’s own cost to expedite delivery. Failure to deliver goods or services on time may result in the termination of the Purchase Order at the Buyer’s option. All materials shall be suitably packed, marked, loaded and shipped in accordance with the requirements of common carriers. All deliveries shall include a packing list indicating the contents of each package.

**3. Prices; Taxes:** Pursuant to the terms of the Agreement and as full consideration for the performance of any services, delivery of any products and/or the assignment of any rights to Buyer, Buyer shall pay Seller the lesser of (i) the amount agreed upon and specified in the applicable Purchase Order, or (ii) Seller’s quoted price on date of shipment. Unless otherwise provided herein, Seller shall pay, defend and hold Buyer harmless from the assessment or imposition of any customs, import, or export duties, and any excise, use or other tax upon any products and/or services purchased from Buyer to the extent such assessments or impositions are required or not forbidden by law to be borne by Seller.

**4. Terms of Payment:** Terms of payment will be determined by terms indicated within any applicable MSA. If no MSA is in place, payment terms outlined within Purchase Order will be in effect. Invoices must contain at a minimum: Buyer Purchase Order number, part number, part description, quantity, price and shipping terms.

**5. Warranty; Rejection:** Seller warrants that, for a period of (2) years from the date a product is delivered to Buyer, such product will be free from any defects in design, material and workmanship. Buyer reserves the right to return, at Seller’s expense, any defective or non-conforming Products or shipments received contrary to this Agreement. Buyer reserves the right to terminate for nonconformity.

**6. Compliance with Applicable Laws:** Seller represents, warrants and covenants that all products and services will be and will have been produced and/or provided in compliance with all applicable federal, state and local laws including, but not limited to , all applicable employment, tax, export control and environmental laws.

**7. Intellectual Property; Indemnity:** Seller warrants that the products and services and the sale and use of them will not infringe any United States or foreign patents, trademarks, copyrights or any other legal rights of third parties. Seller will indemnify, defend, and hold harmless Buyer, and Buyer’s affiliates, owners, directors, employees, representatives and successors against any and all suits, losses, damages, liabilities, costs and expenses (including reasonable legal expenses) associated with any claim of infringement of any patent, trade name, trademark, copyright, trade secrets, or other legal or property right by reason of sale or use of any product or services purchased hereunder.

**8. Insurance:** Seller agrees to carry insurance as follows: (i) workers compensation insurance with statutory limits, and employer’s liability insurance with limits of not less than \$1 million per accident; (ii) commercial general liability insurance covering product liability and general liability with a limit of not less than \$1 million each occurrence and \$2 million aggregate; (iii) business automobile liability insurance with a limit of not less than \$1 million each accident (such insurance shall include coverage for owned, hired, and non-owned automobiles); and (iv) umbrella or excess liability insurance coverage covering product liability and general liability of not less than \$5 Million each occurrence and \$5 Million aggregate. At Buyer’s request, Seller will provide Buyer with a certificate of insurance evidencing each such coverage. In the event Seller ceased to carry adequate insurance, Buyer may immediately cancel the Agreement or any outstanding Purchase Order by giving Seller written notice of Buyer’s election to cancel. All insurance required hereunder shall provide that the insurer’s cost of providing the insureds a defense and appeal, including attorneys’ fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer’s separate responsibility. Seller shall cause its insurance carriers to waive all rights of subrogation against Buyer.

**9. Changes:** Buyer reserves the right to change any specifications, drawings, delivery dates, quantities and items covered in the Agreement. If such change would materially affect the price or delivery date or any products or services, Buyer and Seller shall mutually agree upon an equitable adjustment in price and/or delivery date. No substitutions of products or services shall be made without the prior written approval of Buyer. Seller agrees that it will not make any process or manufacturing changes which might affect the performance, characteristics, reliability or life of the products without prior written approval of Buyer.



**10. Force Majeure:** Neither Buyer nor Seller shall be liable for any failure to perform in accordance with the terms of the Agreement due to acts of war, sabotage, strikes, fires, freight embargoes, floods, explosions, epidemics or other causes of events beyond the control and without the fault or negligence of Buyer or Seller. In the event Seller is unable to perform due to any of the foregoing events, Buyer shall be entitled to terminate the Agreement or any Purchase Order thereunder and/or, to the extent that any MSA or Purchase Order is stated specifically to be an exclusive relationship, may obtain the items covered by any Purchase Order from other sources as Buyer may determine for the duration of Supplier's inability to perform as specified in the Agreement.

**11. Termination:** If Seller or Buyer materially breaches any of the terms or conditions set forth herein and fails to cure such a breach within thirty (30) days after receiving written notification of such breach from the non-breaching party, the non-breaching party may immediately terminate the Agreement upon further written notification to the breaching party.

**12. Indemnity:** To the fullest extent permitted by law, Seller agrees to indemnify, defend and hold harmless Buyer and Buyer's affiliates, customers, directors, officers, employees and agents, from and against any loss, liability, cost, expenses (including but not limited to all reasonable legal expenses), suits, actions, claims and all other obligations and proceedings whatsoever, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Buyer, arising out of injuries to persons, including death, or damage to property, caused by Seller, its employees, agents, subcontractors, or related in anyway to or arising in anyway from any product or service provided by Seller to Buyer under the Agreement. Seller's obligation to indemnify will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability, or otherwise, except to the extent any such liability arises solely out of the gross negligence or willful misconduct of Buyer, its employees or authorized representatives.

**13. Severability:** If any provision of the Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**14. Governing Law:** The Agreement, and the rights and obligations of the parties thereto, shall be determined in accordance with the laws of the State wherein the product, equipment or material shall be installed, or wherein the services shall be performed herein.

**15. Confidentiality:** All specifications, data and other information furnished by Buyer, or its agents, to Seller shall remain the exclusive intellectual property of Buyer and shall be treated by Seller as proprietary and shall not be disclosed or used without the prior written approval of the Buyer.

**16. RoHS, WEEE and Solid Wood Packaging Material:** Seller remains solely responsible for the full compliance of delivered Products with the requirements of Directive 2002/95/EC (RoHS) as of 27 January 2003 and all further releases as well as all national regulations issued in execution of this Directive. Therefore all delivered Product must be suitable and fit for RoHS compliant production.

**17. Conflict Minerals:** Seller remains solely responsible for the full compliance of delivered Products with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Seller is required to perform due diligence on its use of "conflict minerals" (tin, tantalum, tungsten, gold and derivatives of cassiterite, columbite-tantalite and wolframite.) originating from the Democratic Republic of Congo ("DRC") and adjoining countries. Buyer requires that all Product must be sourced from smelters that have been validated as compliant in accordance with the Conflict-Free Smelter (CFS) program and listed on the Compliant Smelter List.

**18. Supply Chain Security:** Seller warrants that it has reviewed its supply chain security procedures and that these procedures and their implementation are in accordance with the criteria set forth by the Customs-Trade Partnership Against Terrorism ("C-TPAT") program of the U.S. Bureau of Customs and Border Protection. Specifically, Seller agrees to conduct an annual security audit and to take all necessary corrective actions to ensure the continued participation of Buyer in C-TPAT. In the event that Seller fails to take an appropriate corrective action Buyer may, but is not required to, terminate the Agreement.

**19. Private Label:** Seller hereby (i) acknowledges Buyer may be purchasing some or all of the products purchased from Seller hereunder for the sole purpose of resale to Buyer's customers and/or distributors under one or more private labels and (ii) consents to Buyer repackaging, rebranding, and reselling any such products at Buyer's sole discretion.

