

Milbank Manufacturing Co. | Terms & Conditions of Sale

OFFER AND ACCEPTANCE: Milbank Manufacturing Co. (“**Milbank**”) offers to sell the equipment (the “**Equipment**”) and any related services indicated to you (“**Buyer**”) in strict accordance with the Terms and Conditions stated herein. Submittal of a purchase order or execution of this offer by Buyer, or allowing Milbank to deliver the Equipment, shall be deemed an acceptance of this offer, which offer and acceptance shall constitute a legally enforceable contract between Buyer and Milbank. Any additional or differing Terms and Conditions contained on Buyer’s purchase order (whether or not such terms materially alter this offer) are hereby rejected by Milbank and shall not become part of the contract between Buyer and Milbank unless expressly approved in writing by a duly authorized representative of Milbank.

DISCOUNT SCHEDULE: Consult local agent or Milbank’s sales office for any applicable discounts.

QUOTATIONS: Quotations are subject to revision or re-quoting after 30 days from quote date. It is Buyer’s responsibility to review all quotes thoroughly for compliance with bid requirements. Any required changes including, but not limited to, quantity, delivery date, product specification, or destination may result in price adjustment or the voiding of the quote. **Any increases in raw material costs greater than 10% within the time frame from quotation until shipment may necessitate the re-pricing of the quotation at Milbank’s discretion.**

PRICE: Prices for the Equipment are subject to change without notice. Notwithstanding any applicable quotation, orders will be billed at the price in effect at time of shipment. Unless specifically provided for in the quotation, the prices for the sale and delivery of Equipment do not include any taxes, tariffs, duties, fees or governmental charges, including, but not limited to, IVA, value added, gross receipts, excise, sales and use taxes (collectively the “**Taxes**”), and Buyer agrees to pay any Taxes payable as a result of the sale and delivery of the Equipment. The foregoing shall not apply to taxes based upon Milbank’s net income. If Milbank pays any Taxes for which Buyer is responsible hereunder, Buyer agrees to promptly reimburse Milbank the amount thereof.

MINIMUM ORDERS: Orders amounting to less than \$100 for the aggregate net purchase price will be automatically billed to Buyer at \$100 plus transportation charges. **Non-stock items may be subject to a minimum order quantity or short run set-up charge – contact Milbank sales office for required quantities and applicable short run set-up charges.**

TRANSPORTATION CHARGES: Unless otherwise stated by Milbank in its quote, all prices are F.O.B. shipping point with freight prepaid and allowed on all standard shipments for orders totaling \$1,350 net aggregate purchase price or greater, provided that all Equipment is shipped at one time to the same destination. For any orders having an aggregate net purchase price of less than \$1,350, all prices are F.O.B. shipping point with freight prepaid and charged. Milbank reserves the right to select the carrier, routing, shipping point, and method of shipment. Buyer will be billed for any non-standard additional delivery charges on prepaid and allowed shipments (such as lift gate, construction site, stop-off or residential delivery charges).

FOR ALASKA AND HAWAII SHIPMENTS: Shipments of qualifying orders to Alaska are freight prepaid and allowed to Seattle or Kent, Washington, and shipments of qualifying orders to Hawaii are freight prepaid and allowed to any continental west coast, U.S. port. Thereafter, Buyer is responsible for arranging and paying for all freight and related charges to the final destination.

EXPORT SHIPMENTS: All Equipment for export is ExWorks shipping point with freight prepaid and allowed on shipments totaling \$1,350 net aggregate purchase price or greater and will be domestic packed and palletized for shipment to any one continental U.S. port. For any orders having an aggregate net purchase price of less than \$1,350, all prices are ExWorks shipping point with freight prepaid and charged. Buyer is responsible for arranging and paying for all freight and related charges from such continental U.S. port to the final destination.

TERMS OF PAYMENT: Upon normal credit approval by Milbank, payment for any Equipment shipped hereunder shall be due in U.S. Dollars within thirty (30) days of the invoice date. Milbank reserves the right to add to any account outstanding more than thirty (30) days from the invoice date a charge of one and one-half percent (1 1/2%) per month on the total amount then outstanding. In the event of disapproval by Milbank for its normal credit terms, terms of payment will be established through mutual agreement of Buyer and Milbank. Further, in addition to Milbank’s other remedies, delinquent accounts may be closed without notice and orders for Equipment (or any portion thereof) held until payment is received.

DELIVERY: Milbank is not responsible for delays in shipment or installation. Ship dates are approximate and based on factory conditions or such other relevant factors at the time the order is accepted. Milbank does not guarantee specific performance or accept responsibility for any liquidated damages, back charges or other losses or penalties that result from delayed delivery, regardless of the cause. Legal title to the Equipment and all risk of loss thereto shall transfer to Buyer upon delivery to the freight carrier at the shipping point. Buyer shall be responsible for securing insurance against risk of loss or damage for the Equipment upon transfer of risk of loss.

CANCELLATION: An order once placed and accepted by Milbank can be cancelled **only with Milbank’s written consent** and under terms which will reimburse Milbank for any loss, cost or expense attributable to the cancellation. Buyer acknowledges that any cancellation charges assessed in order to reimburse Milbank for its losses, costs and expenses are not to be construed as a penalty. Buyer shall remain liable for any orders cancelled and not consented to in writing by Milbank.



RETURN POLICY: Authorization must be obtained in writing from Milbank before returning any Equipment. A Milbank Returned Materials Authorization form must be completed in its entirety and sent to Milbank for approval to return any Equipment. **All Equipment must be in their original carton and in standard package quantities for any authorized return.** A minimum service charge of 25% of the net purchase price of the Equipment plus transportation charges will apply on all returned Equipment. An additional service charge equal to 25% of the net purchase price of the Equipment will apply on items returned after the one-year period following Milbank's shipment of the Equipment. **No Equipment will be accepted for return after a two year period following shipment of the Equipment. Special order items and power generation products (i.e. generators, transfer switches and accessories) are nonreturnable unless otherwise agreed in writing by Milbank. Buyer agrees to inspect all Equipment within forty-eight (48) hours of delivery to determine if any such Equipment is damaged or if product is missing. If Buyer does not notify Milbank in writing within such forty-eight (48) hour period that any of the Equipment is damaged or product is missing, Buyer will be deemed to have accepted such Equipment as undamaged and complete, and Milbank shall have no obligation to repair or replace such Equipment and cost of replacement parts or missing product is the responsibility of the Buyer.**

CARTON QUANTITIES: If the Equipment ordered is sold by Milbank in required carton quantities, Milbank reserves the right, without your consent, to increase the quantities of any item on your order to meet the nearest carton quantity unless your purchase order specifically states to the contrary.

EMERGENCY STORM RESPONSE: For emergency Equipment orders in the event of severe storms or other disasters, Milbank reserves the right to apply a service charge of up to 15% of the net purchase price of the Equipment as repayment of a portion of the additional costs incurred in order to meet emergency order request, including, without limitation, material spot buys, expedited material deliveries, plant overtime, and transfer of production equipment to alternate facilities. **Any order placed for storm recovery or other disaster will be treated as a special order and will be non-returnable.**

INSTALLATION: All installations must strictly comply with all national, state and local codes, industry standards, laws, regulations and applicable installation manual(s). In addition to such national, state and local codes standards, laws and regulations, many utilities have specific requirements for certain Equipment, including metering equipment. It is the Buyer's sole responsibility and obligation to consult the serving utility for their specifications and requirements prior to ordering or installing any Milbank Equipment. Installation of any Equipment may require local electrical inspector approval. All Milbank Equipment must be installed by a licensed electrician. Improper installation voids all warranties.

WARRANTY: If any Equipment manufactured by Milbank fails to work in accordance with the applicable product specifications due to defects in material or workmanship within one (1) year from the date Milbank shipped the Equipment to Buyer, such Equipment will be replaced or repaired at Milbank's sole option. Repair or replacement of Equipment determined by Milbank to be defective will be provided F.O.B. point of manufacture (with Buyer responsible for risk of loss during delivery). All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, Buyer or third party negligence or misuse, including, without limitation, misapplication or use beyond capacity, improper installation, modification, repair, storage or handling on Buyer or its agents' behalf, or any other cause not the fault of Milbank are not covered by this limited warranty, and shall be at Buyer's expense. This warranty does not include reimbursement for the expenses of installation, removal, handling, transportation or shipping costs, or any other expenses which may be incurred. For Equipment or component parts or parts thereof sold to Buyer by Milbank, but manufactured by other third parties, the above warranty shall not apply; rather, Milbank will extend to Buyer the same warranty it receives from the third party manufacturer and/or Buyer will have the benefit of any warranties provided by the third party manufacturer directly to Buyer as the end user of the Equipment. See the particular third party manufacturer's warranty for further details. The third party manufacturer's warranty may change from time to time. The exclusive warranty remedies provided to Buyer in this paragraph shall be contingent upon Buyer's payment in full to Milbank all amounts due for said Equipment. Milbank reserves the right to make changes to the specifications and features of any Equipment from time to time without notice to Buyer and may discontinue any Equipment at any time without notice or obligation. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY AND MILBANK MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY OTHER KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY OTHER MATTER. THE WARRANTIES CONTAINED HEREIN SET FORTH BUYER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A DEFECT IN WORKMANSHIP OR MATERIALS AND SHALL NOT BE DEEMED TO HAVE FAILED ITS ESSENTIAL PURPOSE SO LONG AS MILBANK IS WILLING AND ABLE TO CARRY OUT THE TERMS OF THIS EXCLUSIVE WARRANTY.

LIMITATION OF LIABILITY: All claims, causes of action or legal proceedings against Milbank arising from Milbank's sale of Equipment to Buyer hereunder or use of the Equipment must be commenced by Buyer within the express warranty period specified under the WARRANTY paragraph above, which period is one (1) year from the date of shipment of the Equipment to Buyer. Failure to commence any such claim, cause of action or legal proceeding within such period shall constitute a voluntary and knowing waiver thereof by Buyer. IN NO EVENT SHALL MILBANK'S LIABILITY FOR ANY DAMAGES EXCEED THE PAYMENTS RECEIVED BY MILBANK FROM BUYER FOR THE SPECIFIC EQUIPMENT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, NOR SHALL MILBANK BE LIABLE FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE LIMITATIONS ON DAMAGES IN THIS PARAGRAPH SHALL APPLY UNDER ALL THEORIES OF LIABILITY OR CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO CONTRACT, WARRANTY (INCLUDING WARRANTY REMEDIES UNDER THE WARRANTY PARAGRAPH ABOVE), TORT OR STRICT LIABILITY. THE ABOVE LIMITATIONS SHALL INURE TO THE BENEFIT OF MILBANK'S SUPPLIERS, AGENTS AND SUBCONTRACTORS.

EXCUSE OF PERFORMANCE: Milbank shall not be liable for delays in performance or for non-performance due to acts of the Buyer, failure or interruption of computer or telecommunication systems, acts of God, war, riot, fire, flood, terrorism, armed conflict, civil unrest, labor trouble, labor disputes, labor unrest, unavailability of materials or components, delays in transportation, unavoidable casualties, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, delays in receipt of duty-free or tax-free materials at port clearances, or other unforeseen circumstances or causes beyond Milbank's reasonable control. In the event of such delay, the time for performance shall be extended by a period of time reasonably necessary to overcome the effect of the delay. If Milbank determines that its ability to supply the total demand for the Equipment, or to obtain labor or material used directly or indirectly in the manufacture of the Equipment, is hindered, limited or made impracticable due to any of the causes set forth above, Milbank may allocate its available supply of the Equipment, labor or materials (without obligation to acquire other supplies of any such Equipment, labor or material) among its customers on such basis as Milbank determines to be equitable without liability for any failure or performance which may result therefrom.

DISPUTES AND CHOICE OF LAW: The contract for sale of Equipment is formed and shall be construed, performed and enforced under the laws of the State of Missouri, without giving effect to any choice of law rules thereof. All claims, disputes, and controversies arising out of or relating to this contract, or the breach thereof, shall, in lieu of court action, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The site of the arbitration shall be Kansas City, Missouri, unless another site is mutually agreed between the parties. In the event it becomes necessary for Milbank to incur any costs or expenses in the collection of monies due Milbank from Buyer, or to enforce any of its rights or privileges hereunder, Buyer, upon demand, shall reimburse Milbank for all such costs and expenses (including, but not limited to, reasonable attorney's fees, court costs, arbitration and expert fees).

GENERAL PROVISIONS: (a) The covenants, conditions and terms herein contained shall bind, and the benefits and advantages shall inure to, the permitted successors and assigns of the parties hereto. Notwithstanding the foregoing, Buyer shall not assign, directly or indirectly, its rights or obligations under the contract (which includes the purchase order and these Terms and Conditions) without Milbank's prior written consent. Any assignment in violation of the Terms and Conditions shall be void and have no effect. (b) In the event of any conflict between these Terms and Conditions and a purchase order or any other documentation, these Terms and Conditions shall govern and be controlling on the parties. (c) No waiver by either party of a breach or default hereunder will be deemed a waiver by such party of a subsequent breach or default of a like or similar nature. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Terms and Conditions. (d) Any modification of these Terms and Conditions must be set forth in a written instrument signed by a duly authorized representative of Milbank. (e) If any provision of these Terms and Conditions shall be invalid or unenforceable to any extent, the remainder of the Terms and Conditions and the application of such provision to other circumstances, if applicable, shall not be affected thereby and shall be enforced to the greatest extent permitted by law. (f) The remedies expressly provided for in these Terms and Conditions shall be in addition to any other remedies that Milbank may have under the Uniform Commercial Code or other applicable law. (g) Milbank and Buyer acknowledge and agree that there are no intended third party beneficiaries.