



## Millerbernd Manufacturing Company, Standard Terms and Conditions of Sale

**Customer Orders:** Acceptance of all customer orders by Millerbernd Manufacturing Company ("MMC") is expressly conditioned upon the Terms and Conditions of Sale contained herein (the "Terms and Conditions"). If these Terms and Conditions differ in any way from those contained in the purchase order of the customer ("Purchaser") or if transmission of these Terms and Conditions to Purchaser constitutes or is construed as an acceptance of said purchase order, then any additional or different terms and conditions set forth in Purchaser's purchase order documents or similar communication are objected to and will not be binding upon MMC unless specifically assented to in writing by an Officer of MMC. In any event, the Purchaser's acceptance, including the drop shipment to a requested party, of the ordered products shall constitute and manifest Purchaser's assent to these Terms and Conditions.

**Prices and Terms:** All prices by MMC are payable and due in U.S. dollars. Prices are subject to change without notice. Prices do not include any present or future sales, excise, value-added or any taxes, and where applicable such items shall be billed separately and paid by the Purchaser.

**Quotations; Acceptance of Order by MMC; Specialty Products:** Prices quoted are subject to receipt and acceptance of order within 30 days of the quotation, unless earlier cancelled by MMC. MMC has the sole and final authority with respect to the issuance of all quotations, bids, and price schedules, and the acceptance of all contracts and orders. Quotations provided by MMC shall not be binding offers and are, at all times, subject to the acquisition and availability of materials and subject to change without notice to Purchaser. In all cases MMC's acceptance of a purchase order must be in writing, on approved acknowledgement form, and signed by an authorized MMC representative. Purchase orders submitted to MMC for products to be built to Purchaser's specifications and/or design (collectively, "Specialty Products") may be accepted by MMC only if such purchase orders are accompanied by certified design drawings and specifications from Purchaser, and Purchaser is responsible for the inspection and approval of the preliminary product design and inspection of the delivered product for compliance to the specifications.

**Terms of Payment:** Unless otherwise agreed in writing by MMC, Purchaser shall pay in full the amount of each invoice, within thirty (30) days from the date of the invoice, at MMC principal office or such other location as MMC may specify. If payment is not made when due, Purchaser agrees to pay to MMC interest on the amount past due at the rate of one and one half percent (1½%) per month (18% per annum) or the maximum lawful rate, whichever is less. Nothing herein shall be deemed to extend or otherwise modify Purchaser's obligation to make payment when due.

**Credit Hold, COD, Purchases, Cost of Collection:** MMC reserves the right to place Purchaser on credit hold when any invoice has not been paid in full forty-five (45) days after the invoice date. The credit hold will apply to existing pending shipments and to all affiliates of Purchaser. MMC may in its sole discretion require that any purchase be made on a prepaid or C.O.D. basis. In the event of Purchaser's collection default, the Purchaser agrees to pay MMC reasonable attorney's fees and other reasonable costs in pursuit and collection resolution.

**Freight:** All quotations are freight inclusive F.O.B. Millerbernd Manufacturing Company, Winsted, Minnesota unless otherwise noted. Any re-consignment, redelivery or storage expenses shall be the responsibility of the Purchaser. MMC reserves all rights to determine freight logistics, including but not limited to, carriers, loading sequence, packaging, and delivery method. The Purchaser shall assume title and control of goods upon signed execution of the bill of lading by the carrier. MMC will not be responsible for delays in shipping caused by State, Federal, or Local agencies with regards to, but not limited to, permits, routing, weather, detours, or other matters.

**Routing, Handling, and Storage:** Routing will be determined by MMC, with delivery to the common carrier delivery point nearest to destination. Handling, unloading, storage, extra labor or mechanical facilities, and movement from the shipping destination to Purchaser's job site required in connection therewith will be the responsibility of Purchaser.

**Title, Risk Loss, Acceptance:** In all cases, title shall pass upon signed execution of the bill of lading by the carrier and thereafter all risk of loss or damage shall be upon the Purchaser. The products shall be accepted by Purchaser by an authorized and qualified representative after inspection at the delivery point. Purchaser agrees to accept delivery of the products in accordance with these Terms and Conditions within two (2) days after the delivery date. If the products are not in conformance with these Terms and Conditions, Purchaser shall give written notice to MMC of any claim to that effect setting forth in reasonable detail the manner in which the products do not conform. Notice delivered under this section shall be in writing and shall be deemed given upon receipt if delivered by hand delivery, U.S. registered or certified mail, or reputable overnight carrier. If Purchaser retains the products after their delivery without giving MMC such notice as required within two (2) days after delivery, such failure shall constitute an irrevocable acceptance of the products by Purchaser except with respect to defects not reasonably discoverable by such inspection. Purchaser's sole remedy for any defects or nonconformance shall be in accordance with the warranty herein provided.

**Product Selection:** The customer shall assume all responsibilities and/or liabilities which arise or occur as a result of improper selection of products for the application, including, but not limited to, electrical service, jobsite, geological, or topographical conditions. For design or stress loading applications, such as, but not limited to, overhead wiring, guying of structures, structure mounted banner attachments, or other field installed attachments, consult MMC for respective design review and response.

**Delivery:** Factory shipping dates given in advance of actual shipment are estimated by MMC and shall not be deemed to represent fixed or guaranteed shipping dates. MMC shall not be liable for failure of or delay of performance due to (i) an act of God, act or omission of Purchaser, act of civil or military authority, government priority of other allocation or control, fire, strike, or other labor difficulty, riot or other civil disturbance, insolvency or other inability to perform by the manufacturer, delay in transportation or (ii) any other commercial impracticability. In the event of any such delay, the date of delivery or performance by MMC shall be extended for a period equal to the time lost by reason of delay. In addition to any other right which MMC may have hereunder or at law, MMC may suspend shipment of any goods for which MMC has not already received payment whenever Purchaser is in default under this to any other contract of sale between MMC and Purchaser.

**Job Site Visit Terms:** Job site visits by MMC personnel to assist with installation must be prearranged with MMC a minimum of two (2) weeks in advance with MMC, if the job site is within the continental United States, or a minimum of thirty (30) days in advance, if the job site is outside the continental United States. The Purchaser will receive a written confirmation of the scheduled visit once travel arrangements have been secured and purchased by MMC. If the Purchaser changes the job visitation itinerary after confirmation, any additional expenses incurred by MMC due to the change will be the responsibility of, and invoiced to, the Purchaser. Job site visits pursuant to this paragraph shall not create or increase any rights of Purchaser beyond those expressly set forth below.

**Warranty, Limitation of Liability:** Subject to the terms of MMC's Standard Warranty, for all non-conforming products, MMC shall, at its option, (i) deliver conforming products within a reasonable time at MMC's expense, or (ii) refund all fees paid for the non-conforming products, upon the return of such product to MMC in the same condition it left MMC's facility. A product shall not be considered non-conforming unless the product provided is not the product listed on the applicable invoice. Products manufactured by MMC according to Purchaser's specifications shall not be considered non-conforming.

MMC warrants that the products will, upon shipment, be free from defects in materials and workmanship. In the event of Specialty Products, such Specialty Products will be manufactured according to those specifications approved by Purchaser and provided to MMC, as set forth above. MMC agrees to correct, and retains the right, in its sole discretion, to correct by repair or replacement, at its sole expense, and at its option, either at MMC factory or at the installation site, defects in materials or workmanship which may appear as a result of normal and proper installation and use within one (1) year from the date of shipment (the "Warranty Period") if the following conditions have been met: (i) inspection proves that such defects existed at the time of shipment, (ii) Purchaser gives to



MMC immediate written notice of such defects within the Warranty Period, and (iii) during the Warranty Period the products have been properly installed, maintained, and operated under normal condition by competent personnel under competent supervision. Any transportation cost in connection with correction of defects in the products shall be payable by the Purchaser. MMC does not warranty any products that are altered, except in its sole discretion by written notice to Purchaser from MMC's Customer Service Department prior to alteration. If such notice has not been received by Purchaser, this warranty is null and void as to all altered products. Repair or replacement of any products shall be MMC's only obligation and the sole and exclusive remedy of the Purchaser in the event of a failure to conform to this warranty. MMC shall not be responsible for any damage resulting from improper storage or handling by employees, agents or contractors of Purchaser. MMC shall not assume any expense or liability for repairs made to any purchased equipment and accessories not warranted by MMC, but MMC hereby passes the original manufacturer's warranties to the Purchaser to the fullest extent possible. The warranty provided in these Terms and Conditions covers MMC own products only and does not extend to the failures in performance due either to defects in any equipment or component not manufactured by MMC or to improper or insufficient information furnished to MMC regarding the performance of the equipment in question.

**Limitations of Liability:** MMC SHALL NOT BE LIABLE TO PURCHASER FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL LOSSES OR DAMAGES OF ANY KIND OR NATURE, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR SAVINGS, LOSS OF USE OF EQUIPMENT, OR ANY OTHER COSTS, PENALTIES, OR LIQUIDATED DAMAGES, REGARDLESS OF WHETHER THEY ARISE FROM BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT SHALL MMC BE LIABLE TO PURCHASER FOR MORE THAN THE TOTAL AMOUNT OF FEES IT HAS RECEIVED FROM PURCHASER.

**Indemnification:** Purchaser agrees to indemnify and hold MMC harmless against any and all liability, claims, suits, losses, costs and legal fees caused by, arising out of, or resulting from any negligence, wrongful acts, or omissions in Purchaser's performance or failure to perform as specified in these Terms and Conditions.

**Disclaimer of Warranties:** MMC HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AS DEFINED IN THE UNIFORM COMMERCIAL CODE AND MMC MAKES NO REPRESENTATION, AGREEMENT, GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED OR INFERABLE FROM THE COURSE OF DEALING OR USAGE OF TRADE EXTENDING BEYOND THE DESCRIPTION OF THE PRODUCTS HEREIN INVOLVED CONTAINED IN THE INVOICE TO WHICH THESE TERMS ARE ATTACHED AND THE MMC'S STANDARD WARRANTY. THE MMC'S STANDARD WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND MMC NEITHER ASSUMES NOR AUTHORIZES ANY REPRESENTATIVE OR OTHER PERSON TO ASSUME FOR MMC ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF THE PRODUCTS. MMC shall have no liability for damages and/or claims arising from Purchaser's failure to provide static and static load requirements to MMC, for incremental stresses or loads to products that may result from external sources, not presented in the original design or other data presented to MMC.

**Claim for Shortages:** All claims for shortages must be in writing two (7) days from the receipt of shipment at destination.

**Returned Goods:** Specific written request must be made in advance by Purchaser to obtain credit or replacement on goods returned. The authorization to return goods will be at the sole discretion of MMC and only upon written notice to Purchaser from an officer of MMC. On goods accepted for return, Purchaser must prepay 100% the return shipment expense and restocking charges as will be specifically noted with written MMC acceptance for return. MMC reserves the right to reject, in entirety, any return requests.

**General:** MMC reserves the right to change any feature of its published specifications without notice to promote production improvement and/or allow for materials availability. Any representation, affirmation of fact and course of dealings, promise or condition in connection therewith or usage of trade not incorporated herein, shall not be binding on either party. No waiver, alteration or modification of any of the provisions hereof shall be binding upon MMC unless specifically assented to in writing by an Officer of MMC. **FORCE MAJEURE:** No liability shall result to MMC from delay in performance or nonperformance caused by circumstances beyond the reasonable control of MMC, including, but not limited to, acts of God, fire, flood, war, labor disturbances, governmental regulation, direction or request of Purchaser. **CHOICE OF LAW:** These Terms and Conditions and the parties' relationship are governed by and construed in accordance with the laws of the state of Minnesota without reference to Minnesota's choice of law rules. **ARBITRATION:** Any controversy or claim arising out of or relating to these Terms and Conditions, or the breach thereof, shall be resolved through binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, and shall be venued and take place in the state of Minnesota. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. **LIMITATION ON ACTIONS:** No action arising out of these Terms and Conditions, any purchase order, performance or alleged breach thereof, may be brought by Purchaser against MMC unless commenced within six months after such cause of action has accrued. **ASSIGNMENT:** The Purchaser may not assign, delegate, or otherwise transfer these Terms and Conditions or any right or obligation under these Terms and Conditions without the prior written consent of MMC. Any assignment, delegation or transfer in violation of this provision shall be void. **TERMINATION:** MMC may, in its sole and absolute discretion, terminate a purchase order, upon fifteen (15) days written notice provided to Purchaser. Purchaser may cancel a purchase order upon ninety (90) days written notice to MMC, provided that (i) the product is not in transit to Purchaser, and (ii) Purchaser has received MMC's prior written consent for such cancellation. Cancellation of any purchase order by Purchaser will subject Purchaser to a cancellation charge based upon any and all material, engineering, or administrative expenses already incurred and any commitments made by MMC pursuant to the execution of the Purchaser's purchase order.

**Authority:** The person signing on behalf of Purchaser represents and warrants to MMC that such person is an authorized agent of Purchaser, with full power and authority to enter into the agreement defined by these Terms and Conditions.

**Effective Date:** These Terms and Conditions supersede any previous issues.