MANNER PLATING COMPANY

STANDARD TERMS AND CONDITIONS OF SALE

**1. GENERAL**

The following Standard Terms and Conditions of Sale ("Terms & Conditions") are applicable to all sales made by Manner Plating Company**,** having its principal place of business at 926 River Lane, Loves Park, IL 61111, (hereinafter referred to as **“Seller”**) Buyer’s purchase of any goods and/or services from Seller is expressly conditioned upon Buyer's consent to these Terms & Conditions.

All sales are subject to written confirmation by Seller. Receipt by Buyer of Seller's notice of acknowledgment of an order without prompt written objection thereto shall constitute acceptance by Buyer of these Terms & Conditions.

Buyer must respond to Seller's notice of acknowledgment within **five (5) days** of receipt of such acknowledgment or Buyer will waive its right to cancel the order.

**2. PRODUCT PRICE QUOTATIONS; MINIMUM CHARGE**

The quotations or tenders are noncommittal in nature. No contract shall arise until a written notice acknowledgment from Seller accepting the Buyer's order, is sent by Seller to the Buyer. Because no contract is formed until Seller acknowledges Buyer's order, these Terms shall supersede any and all terms of Buyer. Seller will be entitled to adjust agreed prices on the basis of the average change in the cost price of the goods or services to be delivered. The adjustment of agreed prices and rates will apply as of the beginning of the first month after the Buyer has been notified in writing of the adjustment.

The weights, dimensions, capacities, performance ratings and other data on Seller’s catalogs, prospectus, circulars, advertisements, price lists and instructions sheets are mentioned only as general information. They are only approximate and shall not bind Seller.

Any part, regardless of amount, which is processed by Buyer is subject to a minimum lot charge. The price for finishing carries a per pound or piece value, and when the calculated cost is less than the minimum charge, the minimum charge shall apply.

**3. DELIVERY; RISK OF LOSS**

Unless otherwise specified by the parties in writing, Buyer shall charge a $10 handling charge per order for boxing parts for shipment. Shipments to addresses within twenty-five (25) miles of Seller’s principal place of business shall be picked up and delivered for free. Shipments to addresses twenty-five (25) miles or greater from Seller’s principal place of business shall be subject to an additional delivery charge to be specified by Seller. Seller is not responsible for any damage in shipment.

**4. DELAYS IN DELIVERY**

Where a specific shipping date is not designated in a writing signed by the Seller, the Seller shall not be responsible for any delays in filling those orders, nor shall it be liable for any loss or damages resulting from such delays. If a specific shipping date is specified in the order or later agreed to by the Seller, then the Seller shall not be liable for any delays in filling this order caused by delays resulting from any and all conditions beyond the control of Seller, including but not limited to, (a) accidents to or malfunctions of machinery; (b) differences with employees, strikes, or labor shortage; (c) fire, floods, hurricanes or other natural disaster; (d) supplier or subcontractor delays, including any quantity or quality defects; (e) delays caused by an instrumentality of the United States Government or any government; (f) delays in the transportation; (g) restriction imposed by any governmental regulation, whether valid or invalid; or other cause beyond the control of the Seller, or any condition without the sole fault or negligence of the Seller. To the extent that Seller is liable for any delays in filling orders, Buyer’s remedy shall be limited to a Seller credit against future orders, if provided in Seller’s written acknowledgement of Buyer’s order.

Under no circumstances shall Buyer or Buyer's customer be entitled to any damages for Seller's failure to ship on time, and Buyer agrees to indemnify, defend and hold Seller harmless against any costs and expenses related to any claims for lost profits or other consequential damages based on Seller's failure to deliver timely.

**5. PAYMENT**

Unless otherwise stated, payment for the Products shall be received by Seller based on the following terms: within **thirty (30) days** net from the date of the issuance of the invoice. In the event that payment is not received when due, interest shall be due at the rate of **one percent (1%)** on the unpaid portion of the invoice sum for each period of **thirty (30) days** or part thereof from the due date. Buyer shall pay all of Seller's costs of collection of any amounts past due, including, but not limited to attorneys’ fees, court costs, witness fees, travel and lodging, etc.

Seller has the right to refuse to deliver good or services if Buyer is past due on any of its debts to Seller. Furthermore, Seller shall have the right to retake all goods immediately unless other written arrangements have been made concerning payment only if Buyer is past due. Buyer agrees to make all goods available, shipping ready, for Seller, within **five (5) days** of receiving notice from Seller of its intention to retake the goods.

Seller will be entitled to apply payments made by Buyer first to pay those claims it deems appropriate, including interest, late charges, costs of collection, etc.

Buyer will not be entitled to suspend its payment obligations to Seller and/or to offset them with any obligations of Seller to Buyer. Buyer will not be entitled to dissolve the contract with Seller if Buyer is in default.

If Buyer does not fulfill its payment obligations to Seller completely or within the applicable payment period, Seller will be entitled to suspend its obligations to Buyer completely and/or not to perform them.

**6. LIMITED WARRANTY**

Seller warrants that processing and finishing shall meet the Buyer’s specifications supplied in writing with the order. When specification revision level is not called out by the Buyer, the Buyer will accept specification revision level on file at Seller. Such processing and finishing shall be free from defect in material or workmanship. If the Buyer specifies methods and procedures to be followed, Seller will assume no responsibility for the correctness of such methods and procedures or the result when they are followed. Seller does not warrant that material furnished by Buyer is suitable or fit for processing and finishing. No Terms or Conditions of any Purchase Order or similar document submitted by Buyer will become part of any agreement with Seller unless accepted in writing by Seller.

Any material or merchandise found, upon Seller’s inspection, to be improperly processed by Seller will be replaced without charge within sixty (60) days provided:

a) that notice of defect is given in writing to Seller within five (5) working days from the date of delivery;

b) that Seller is given the opportunity to inspect the material or merchandise prior to return;

c) that materials or merchandise returned are in the same condition as when originally delivered by Sellers.

Processing or assembly of any such rejects by the Buyer or any other party shall constitute a waiver of any liability on Seller’s part.

**7. LIMITATIONS ON WARRANTY**

**THE FOREGOING WARRANTY IN SECTION 6 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY SELLER. SELLER DISCLAIMS ANY EXPRESS WARRANTY NOT PROVIDED HEREIN AND ANY IMPLIED WARRANTY, GUARANTY OR REPRESENTATION AS TO PERFORMANCE, QUALITY AND ABSENCE OF HIDDEN DEFECTS, AND ANY REMEDY FOR BREACH OF CONTRACT, WHICH BUT FOR THIS PROVISION, MIGHT ARISE BY IMPLICATION, OPERATION OF LAW, CUSTOM OF TRADE OR COURSE OF DEALING, INCLUDING IMPLIED WARRANTIES OF WORKMANLIKE QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. SELLER FURTHER DISCLAIMS, ANY RESPONSIBILITY FOR LOSSES, EXPENSES, INCONVENIENCES, SPECIAL, INDIRECT, SECONDARY OR CONSEQUENTIAL, INCIDENTAL, AND CONTINGENT DAMAGES WHATSOEVER, INCLUDING DAMAGES ARISING FROM OWNERSHIP OR USE OF PRODUCT. IMPLIED WARRANTIES IN JURISDICTIONS WHERE THEY MAY NOT BE DISCLAIMED SHALL BE IN EFFECT ONLY FOR THE DURATION OF THE EXPRESS WARRANTY SET FORTH HEREIN.**

**If BUYER has a claim under this Limited Warranty or under any implied warranties provided to BUYER by state law, BUYER may not file a court action based on that claim any later than one (1) year after BUYER’s right to file a court action accrues. In those states which do not allow this limitation on the time period for filing a court action, this provision is inapplicable.**

## **8. LIABILITY AND REMEDIES**

**SELLER’s liability with respect to the Product sold TO BUYER AND ANY SERVICES PROVIDED BY SELLER shall be limited to the warranty provided IN SECTION 6. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKING, ACTS OR OMISSIONS RELATING THERETO.**

**THE AMOUNT OF SELLLER’S LIABILITY FOR ANY CAUSE OF ACTION AGAINST BUYER IS LIMITED TO AND SHALL NOT EXCEED THE CONTRACT PRICE FOR THE WORK DONE BY SELLER MINUS SELLER’S OUT OF POCKET EXPENSES.**

**Without limiting the foregoing, SELLER specifically disclaims AND SHALL NOT BE LIABLE FOR any liability for property or personal injury damages, penalties, special, CONSQUENTIAL, INCIDENTAL, CONTINGENT or punitive damages, damages for lost profits or revenues, services, down time, shut down or slow down costs, or for any other types of economic loss, and for claims of BUYER’s customers or any third party for any such damages, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**BUYER AGREES THAT WITH REGARD TO ANY POTENTIAL CLAIM RELATING TO THE GOODS AND/OR SERVICES TO BE PROVIDED BY SELLER, BUYER SHALL WAIVE AND NOT SEEK ANY REMEDY OTHER THAN A CLAIM FOR BREACH OF LIMITED WARRANTY TO BE SOUGHT SOLELY AND EXCLUSIVELY FROM SELLER. IN PARTICULAR, BUYER AGREES THAT IT SHALL NOT SEEK ANY REMEDY FROM ANY OWNERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ASSOCIATES, SUBSIDIARIES, OR AFFILIATES OF SELLER, AND BUYER HEREBY WAIVES ANY AND ALL OTHER POTENTIAL CLAIMS AGAINST SAID PARTIES.**

**PRIOR TO FILING ITS CLAIM FOR BREACH OF LIMITED WARRANTY, BUYER MUST FIRST AFFORD SELLER A REASONABLE OPPORTUNITY TO CURE THE BREACH THROUGH THE FOLLOWING PROCEDURES: IF BUYER REASONABLY BELIEVES THAT SELLER HAS COMMITTED A BREACH, BUYER MUST PROVIDE A SIGNED, WRITTEN NOTICE VIA U.S. CERTIFIED MAIL TO MANNER PLATING COMPANY, 926 RIVER LANE, LOVES PARK, IL 61111. SELLER SHALL THEN HAVE SIXTY (60) DAYS FROM THE DATE OF RECEIPT OF SUCH NOTICE OF BREACH TO CURE THE BREACH BY PROVIDING BUYER’S REQUESTED REPAIR AND/OR REPLACEMENT. IN THE EVENT THAT BUYER FAILS TO PROVIDE SUCH NOTICE, ITS CLAIM SHALL BE DISMISSED FOR FAILURE TO STATE A CLAIM.**

**THE BUYER AGREES AND UNDERSTANDS THAT THIS LIMITATION OF LIABILITY IS NOT AN EXCULPATORY CLAUSE.**

**9. CANCELLATION PRIVILEGES**

Seller may cancel any contract if Buyer is in default of the payment of any obligations pursuant to or any contract between the parties, or if in the sole judgment of Seller, Buyer's financial condition and responsibility has become materially impaired. In addition, Seller shall have the right to recover damages for nonperformance, and any unpaid installments due on account of this or any other contract between the parties shall become immediately due and payable. If the Buyer validly cancels the contract, the Buyer will be obliged to compensate the Seller for any costs incurred by the Seller in connection with making the offer and entering into the contract and the damage and/or loss arising from the cancellation.

The Seller will be entitled to terminate the contract unilaterally with immediate effect, fully or in part and/or to suspend performance of its obligations under the contract with immediate effect if:

a. the Buyer has failed to fulfill one or more of its obligations under this or any other contract or sales terms;

b. Buyer has suspended payments or has sought the protection of the Bankruptcy Courts;

c. a petition for the involuntary bankruptcy of the Buyer has been filed;

d. the Buyer’s property on Seller’s premises has been attached in execution;

e. a resolution for the dissolution and/or winding up of the Buyer has been adopted;

f. the enterprise operated by the Buyer has been fully or partly transferred to a third party.

The Seller will not be liable with respect to the Buyer for any damages arising from termination of the contract or from the suspension of obligations under the contract for the aforementioned reasons.

If the contract is terminated, performance of the contract already received by the Buyer and the payment obligations of the Buyer in connection with it will remain. The amounts invoiced by the Seller for performance prior to or upon termination of the contract will be immediately due and payable after termination. Buyer agrees to pay any of Seller’s costs, damages, attorneys’ fees and other expenses associated with Seller’s termination of any contract with Buyer pursuant to the terms of this section.

**10. CONFIDENTIALITY AND NON-DISPARAGEMENT**

Buyer agrees to use its best efforts to maintain in confidence the existence of these Terms & Conditions, the underlying allegations associated with these Terms & Conditions, the basis Buyer asserts in requesting any refund, the contents and terms of these Terms & Conditions and the consideration for these Terms & Conditions (hereinafter collectively referred to as "Confidential Information"). Unless otherwise provided herein, Buyer hereto agrees to take every reasonable precaution to prevent disclosure of any Confidential Information to third parties, and agrees that there will be no publicity, directly or indirectly, concerning any Confidential Information. Buyer agrees to refrain from any disclosure of Confidential Information, disparagement, criticism, defamation, slander of the other, or tortious interference with the contracts and relationships of Seller. The Parties agree that in the event of a breach of this section it is and will be impracticable and extremely difficult to determine the actual damages suffered by Seller and that Seller will suffer an irreparable injury, such that no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Therefore, the parties have agreed that in order to compensate Seller for its loss in the event of breach of this section or other sections of these Terms & Conditions, Buyer shall pay to Seller the purchase price of the product at issue, provided, however, this remedy shall not prevent Seller from seeking additional damages that it may be entitled to.

**11**. **No Representation**

Each Party represents that it has carefully read and understands the scope and effect of the provisions of these Terms & Conditions. Neither Party has relied upon any representations or statements made by the other Party which are not specifically set forth in these Terms & Conditions.

**12.** **No Admission Of Liability**

Each Party acknowledges and agrees that neither these Terms & Conditions, nor any consideration provided pursuant to these Terms & Conditions, shall be taken or construed to be an admission or concession by either Seller or Buyer of any kind with respect to any fact, liability, or fault.

**13.** **Costs**

If at any time after the effective date of these Terms & Conditions, Seller institutes any action or proceeding against Buyer relating to the enforcement of these Terms & Conditions, Buyer shall reimburse Seller for the reasonable expenses of attorneys’ fees and all costs and disbursements incurred therein, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. Subject to the provisions of local law, Seller shall recover all such fees, costs or disbursements as costs taxable by the court or arbiter in the action or proceeding itself without the necessity for a cross action.

**14.** **WRITTEN Modification**

This Agreement cannot be modified, altered or changed except by a writing signed by both the Seller and the Buyer wherein specific reference is made to this Agreement.

**15. FORCE MAJEURE**

In case of a Force Majeure event, the Party's obligations that cannot be performed as a result of such Force Majeure event are suspended during the time that the Force Majeure event lasts. Force Majeure as meant in this Contract means any circumstances that are beyond the reasonable control of a Party, such as (but not limited to) unforeseeable and unavoidable conditions, natural disasters, fire, torrents and earthquakes. If a Force Majeure event is present, the Parties whose obligations are suspended shall notify the existence of such event in writing to the other Party. Buyer agrees to indemnify, defend and hold Seller harmless against any claims made by third parties based on whole or in part on Seller’s inability to perform because of Force Majeure.

**16. GOVERNING LAW**

These Terms & Conditions shall be construed in accordance with the internal laws of the State of Illinois without regard to principles of conflict of law, in every respect including, without limitation, validity, interpretation, and performance. The prevailing party in any proceeding to enforce the provisions of these Terms & Conditions shall be entitled to recover all costs, changes, and expenses, including reasonable fees of attorneys, agents, and others retained by the prevailing party, incurred in such proceeding. Any suit or proceeding arising from or relating in any way to the subject matter of these Terms & Conditions shall be brought only in the courts, state and federal, located in Chicago, Illinois, and the parties hereby consent to the exclusive federal jurisdiction and venue of such courts.

**17. ARBITRATION**

All disputes and differences of any kind arising under these Terms & Conditions, or arising between the Parties including the existence or continued existence of these Terms & Conditions and the arbitrability of a particular issue, which cannot be settled amicable by the Parties, shall be submitted to binding arbitration. The arbitration shall be conducted in Chicago, Illinois, USA, and shall be finally settled in accordance with the Rules of Arbitration of the American Arbitration Association, by one or more arbitrators appointed in accordance with the above-mentioned rules. The decision of the arbitration tribunal shall be final and binding upon the Parties and may be enforced in any court of competent jurisdiction, and no Party shall seek redress against the other in any court or tribunal except solely for the purpose of obtaining execution of the arbitral award or of obtaining a judgment consistent with the award.

**18. ENTIRE AGREEMENT AND INTEGRATION**

These terms & conditions constitute a single integrated contract and the entire agreement and understanding between the parties relating to the subject matter hereof and thereof and supersedes all prior agreements, understandings, representations, communications and arrangements, whether oral, written, express or implied, between the parties relating to the subject matter hereof.

**19. SEVERABILITY**

Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The Parties further agree to renegotiate any so severed provision to bring the same within applicable legal requirements to the greatest extent possible.

**20. COST AND FEES OF COURT/ARBITRATION**

Should Seller prevail in any dispute, whether in arbitration or court, including obtaining a dismissal in court or settlement in favor of Seller, Buyer agrees to pay all of Seller’s costs and fees. “Costs and Fees” mean all expenses of the arbitration or litigation, including the arbitrators’ fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys’ fees.

**21. NO PRIOR REPRESENTATIONS**

Each party acknowledges that, except as expressly set forth herein, no representations of any kind or character have been made by any other party or parties, agents, representatives, or attorneys, to induce the acceptance of these Terms & Conditions.

**22. SPECIAL OR EXPERIMENTAL OPERATIONS**

For special prototype(s), first article(s), sample(s) or experimental processing, and finishing, Seller’s charges are not contingent upon the success of the work or the benefit derived therefrom by the Buyer.

**23. CHANGE OF OWNERSHIP**

Seller must be notified in writing, and by certified mail of any change in ownership, the name of the business structure under which credit is established.

**24. CANCELLATION OF ORDER**

In the event of the Buyer’s cancellation of order, the Buyer shall reimburse Seller for the work completed and work in progress and for tooling and engineering expenses incurred in connection with such order.

**25. SECURITY**

All Buyer’s merchandise in Seller’s possession shall be subject to a general lien for all monies owing by the Buyer to Seller, whether or not due or payable, and whether or not such monies are owing Seller for work, labor, or services rendered, or materials or equipment used in connection with such merchandise.

**26. DEFAULT**

In the event of bankruptcy or insolvency proceedings involving the Buyer, or in the event of the appointment of an assignee for the benefit of creditors or of a receiver, or if the Buyer is insolvent or fails to perform any obligation arising from this order or the terms and conditions contained herein, including, but not limited to, default of payment, Seller may, without any liability whatsoever and without prejudice to any other rights or remedies which Seller may have at law or in equity, immediately terminate in whole or in part, further performance by Seller of its obligations arising from this order or the terms and conditions contained herein.

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Buyer, by its duly authorized officer accepts the above Terms and Conditions.

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| **BUYER’S NAME:** |  |
| By |  |
|  |  |
| Name:  |  |
| Title:  |  |
| Date: |  |