



MANNA SUPPLY, INC.

4242 Stirling Street
Philadelphia, PA 19135

Integrated Procurement

Supply & Distribution

Project Management

Advanced Logistics

MANNA SUPPLY, INC. TERMS AND CONDITIONS OF SALE

1. **MANNA SUPPLY, INC.** For all sales, "Seller" or "Manna Supply" shall mean Manna Supply, Inc.; and wherever Seller's signature or approval is required, it must be by an Officer of Manna Supply. Manna Supply's agents, employees, and representatives have no authority to bind Manna Supply to any affirmation, waiver, representation, or warranty inconsistent with these terms and conditions, unless expressly agreed to in writing by an Officer of Manna Supply or otherwise approved by duly authorized corporation action.
2. **TERMS OF SALE.** Sales made by Manna Supply and Customer's account with Manna Supply are subject to these Terms and Conditions ("Terms") which shall take precedence over any inconsistent or additional terms in Customer's purchase order or other purchase documents. Notice is hereby given pursuant to Section 2-207 of the Uniform Commercial Code of Manna Supply's objection to any terms and conditions in addition to or different from these Terms which may be contained in any writing issued by Customer. These Terms are the final, complete and exclusive statement of all the terms and conditions of Customer's account with Manna Supply and the sale of goods by Manna Supply to the Customer.
3. **GENERAL AGREEMENT.** All sales are expressly conditioned on these terms and conditions. No additional or different terms shall apply (whether a part of Buyer's purchase order or other communication from Buyer) unless expressly agreed to in writing by an Officer of Manna Supply. Any acceptance by Buyer with additional or different terms proposed in the acceptance shall be deemed a rejection of Manna Supply's offer and construed as a counteroffer. No binding agreement shall come into existence without the written consent of Manna Supply to such counteroffer. Any attempt to vary any of the terms of this offer shall be deemed a material alteration. Notice is hereby given that Manna Supply objects to any different or additional terms and that such different or additional terms shall not be binding upon it. Acceptance of or payment for any of the goods constitutes Buyer's agreement to the Manna Supply Conditions of Sale. If these terms and conditions are incorporated by reference in a Purchase Agreement, Sales Agreement or other Agreement with Buyer, these provisions shall control notwithstanding anything to the contrary.
4. **WARRANTIES.** Since the goods sold hereunder are not manufactured by Manna Supply, the company makes no warranties or representations, express or implied, as to workmanship, performance, quality, durability, fitness for a particular purpose, suitability or merchantability for any of the products sold. This disclaimer is for all liability including liability in contract, in tort or otherwise for incidental, consequential, special damages, or any loss or damage, whether to property or injury to persons, whether foreseeable or not foreseeable, resulting, directly or indirectly, from the use or loss of use of any product sold.

Manna Supply agrees to assign and pass-through to Buyer any warranties expressly provided by the manufacturer of the product purchased, which shall be Buyer's exclusive rights of warranty. Buyer's remedies are subject to any limitations contained in manufacturer's terms and conditions to Seller. If there is no warranty provided by the manufacturer, then the goods are sold "as is." While Manna Supply may provide manufacturer warranty information, it does not warrant or guarantee any such delivery or advice.
5. **COMPLIANCE.** Since Manna Supply is not a manufacturer of goods, Manna Supply does not guarantee that the products sold to Customer comply with the "Buy American" provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), the Pennsylvania Steel Products Procurement Act, or any other similar federal, state or local law, unless otherwise agreed in writing by Manna Supply.
6. **LIABILITY.** Manna Supply shall not be liable for special, indirect, incidental or consequential damages of any kind from the use or loss of use of any product or due to, arising out of or connected with these Terms and Conditions of Sale. In addition to the assignment of manufacturer warranty stated above, Buyer's exclusive remedy for any claim against Manna Supply is for Manna Supply, at its option, to repair or replace the goods, or for Manna Supply to request return of the product and tender to Buyer the purchase price paid upon redelivery. The remedies of Buyer as set forth herein are exclusive, and the liability of Manna Supply with respect to any contract of sale or anything done in connection with it, whether in contract, tort, negligence strict liability, breach of contract, indemnity or under any legal theory, warranty or otherwise, shall not exceed the purchase price of the goods on which such liability is based.
7. **PATENTS.** If any goods shall be sold by Manna Supply to meet Buyer's particular specifications or requirements and is not part of Manna Supply's standard line offered by it to the trade generally in the usual course of Manna Supply's business, Buyer shall hold Seller harmless from, and release and not make claim or suit against Seller because of, any suits, claims, losses, or other liability made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other

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proprietary rights, at common law, or claim of unfair trade or of unfair competition, resulting from, or occasioned by, Buyer's use, possession, sale, or delivery of the merchandise sold to Buyer by Manna Supply.

8. **DELIVERY.** Shipment dates are approximate and are subject to the availability of material, production schedules, carrier schedules and other related factors. Manna Supply shall not be responsible for any manufacturing, shipment, transportation or any other delay in delivery of goods. Unless otherwise agreed by Manna Supply and Customer, all shipments are F.O.B. point of shipment and all goods are shipped at Customer's risk. Title to goods passes to Customer, and Manna Supply's responsibility for safe delivery ceases, when goods are accepted by the first carrier. Any redress for damages sustained during transportation must be obtained by Customer from the carrier. Timely pursuit of this redress is the exclusive responsibility of Customer. All direct shipments are F.O.B. point of shipment, and each shipment or delivery shall be considered a separate and independent transaction. Responsibility for filing claims with the manufacturer or carrier, as the case may be, rest with the Buyer.

9. **SINGLE BREACH BY BUYER.** Each shipment shall be treated as a separate and independent contract with respect to forwarding and terms of settlement. However, if Buyer defaults in the payment of any purchase price when due, Manna Supply may, without prejudice to other lawful remedies, immediately place the account on hold and defer further performance until the defaulted payments are made, or on three days' written notice to Buyer, may either make future deliveries against the contract for cash in advance only, or treat the entire contract as breached by Buyer and pursue its remedies for such breach.

10. **ACCEPTANCE OF GOODS.** Buyer shall make an examination of any goods delivered immediately upon its receipt. Buyer's failure to give written notice of any claim within 10 days after the receipt of such material shall constitute Buyer's acceptance of such material. Upon acceptance, Buyer assumes all risks and liability for the results obtained in its business by the use of any materials delivered or by the use of such materials in combination with other goods or materials. In no event may customer set-off payment for any rejected or revoked acceptance goods against payment due on goods accepted. Manna Supply shall not be responsible for reimbursement of any contractor fees or other costs incurred by Customer to replace the defective goods, shortages or other discrepancies.

11. **INTERPRETATION OF PLANS/SPECIFICATIONS.** Manna Supply does not guarantee that the goods sold to Customer conform with Customer's plans and specifications, unless specifically agreed by Manna Supply in writing. It is Customer's responsibility to ensure that the materials conform to the plans and specifications.

12. **SECURITY INTEREST.** Manna Supply retains a purchase money security interest under the Uniform Commercial Code in the goods sold until payment in full has been made. Manna Supply shall have the right to perfect its security interest by filing financing statements naming Customer as debtor and Manna Supply as secured party.

13. **NO ACCORD AND SATISFACTION.** No payment by Customer or receipt by Manna Supply of a lesser amount than any payment due Manna Supply shall be deemed to be other than on account of the earliest unpaid invoice then due and payable or the specific invoice(s) designated on the payment. Customer is hereby advised that Manna Supply may instruct Customer to forward all sums due Manna Supply to a Lock Box account maintained by Manna Supply, which will result in such checks or payments being automatically deposited to Manna Supply's account without review or inspection prior to the same being deposited. Accordingly, Customer agrees that Manna Supply should not be bound by any endorsement or statement on any check, payment or any letter accompanying any check or payment and no such endorsement, statement or letter shall be deemed an accord and satisfaction, whether such check, payment or letter is forwarded to Manna Supply's Lock Box or directly to Manna Supply or elsewhere and Manna Supply or Manna Supply's bank may accept such check or payment without prejudice to Manna Supply's right to recover the balance of such account or pursue any other remedy provided by these Terms and Conditions, at law or in equity.

14. **NO RIGHT OF SET OFF.** Customer shall have no right to set off amounts due with respect to one transaction for claims under any other transaction with Manna Supply.

15. **HELD ORDERS.** For any order held, delayed or rescheduled at the request of the Customer, Manna Supply will require payment based on any charges by the manufacturer of the goods, carriers and/or warehousemen including, but not limited to, any delay, detention, demurrage, storage, or auxiliary charges. Customer shall further be liable for any such charges resulting from Customer's requirements for special service or Customer's failure to accept delivery in a timely manner.

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16. **NOTICE OF CLAIM FOR DEFECTIVE DELIVERY.** Buyer will be conclusively deemed to have accepted and agreed to any invoice from Manna Supply (including but not limited to the price, quantity, quality, and description of the goods as stated on the invoice and any and all terms, provisions, conditions, agreements, representations, and warranties on the invoices), unless Manna Supply receives written objection to the invoice from Buyer within 10 days after the date the invoice is sent to Buyer.

17. **PAYMENT.** Unless there is an express written agreement between Manna Supply and Buyer specifying different payment terms, Manna Supply invoices will be due 30 days after shipment of products. All payments must be received within 30 days (or such other time period as we may mutually agree in writing). There is no grace period, and Buyer's account may be automatically placed on hold if payment is not received within the period provided by these terms and conditions. Buyer must ensure that payments are processed and mailed on time to meet these requirements. Buyer's obligation to pay Seller for the goods and services provided are not conditioned upon Buyer obtaining acceptance or approval from any third party (e.g. lenders, contractors, project managers, bondholders, insurance companies, owners) or receiving payment from any third party (e.g. "retainage" amounts, insurance or bond proceeds, or "pay-when-paid" contract agreements).

18. **TAXES.** The prices for goods do not include any sales, use or other taxes or charges payable to state or local authorities unless otherwise stipulated. Buyer shall be responsible for and shall pay all federal, state and local sales, use, property, excise, freight or other taxes imposed on or with respect to the goods, except taxes levied on Seller's net income with respect to such goods.

19. **SERVICE CHARGES.** Invoices that are more than 30 days past due are subject to interest from the due date until paid at the lesser of 1.5% per month (18% per annum), or the highest rate permitted by applicable law.

20. **RETURNS.** In no case are goods to be returned without first obtaining Manna Supply's permission. Buyers shall pay the costs of return of any goods and shall use its best efforts to insure that all packaging materials that Manna Supply supplies are maintained in suitable storage areas to protect them from damage, including, without limitation, from forklifts and weather. Goods must be securely packed to reach Manna Supply without damage. Material accepted for credit may be subject to a service charge plus all transportation charges. Credit for returned goods will be allowed only to the extent agreed to in writing by a duly authorized representative of Manna Supply and no application for credit will be processed unless Buyer provides the original invoice number and date.

21. **ASSIGNMENT.** No right or obligations of Buyer shall be assigned to, or assumed or performed by, a third party without the prior written consent of Manna Supply, and any purported assignment or assumption without such consent shall be void.

22. **APPLICABLE LAW.** The validity, construction and performance of any agreement will be governed by the laws of the State of Pennsylvania without regard to conflicts of laws principles. In the event of litigation in court, each Party agrees and hereby submits to the exclusive personal jurisdiction and venue of the State and Federal Courts in the State of Pennsylvania. In the event that Manna Supply is forced to initiate collection proceedings for amounts due to it, Buyer agrees that it will be liable for all collection and other costs incurred by Manna Supply including, but not limited to, reasonable attorneys' fees whether or not litigation is commenced.

23. **NON-WAIVER BY MANNA SUPPLY.** Waiver by Manna Supply of a breach of any of these terms and condition shall not be construed as a waiver of any other breach. Manna Supply's acceptance of less than full payment shall not be a waiver of any of its rights.

24. **SECURITY INTEREST, POWER OF ATTORNEY.** In addition to any security interest granted by the UCC, the Buyer grants Manna Supply a security interest in all Equipment, proceeds, and products from the same to secure all obligations of the Buyer to Manna Supply. Buyer shall sign financing statements evidencing the security interest as reasonably requested by Manna Supply. In case of a default by Buyer, Manna Supply may peaceably enter the premises of the Buyer to repossess all Equipment in which it has a security interest, Buyer shall not sell, exchange, transfer, or grant a security interest in any Equipment, which are subject to these terms and conditions if payment for same has not been made in full to Manna Supply.

25. **AUTHORIZATION OF BUYER AND BUYER'S AGENTS.** In consideration of Manna Supply selling goods to Buyer, the person signing any such acceptance or agreement on behalf of Buyer represents and warrants that he or she is authorized to sign on behalf of Buyer. The parent company, if any, of Buyer also guarantees performance of the agreement and payment by Buyer. The person signing and Buyer warrant that the information given to Manna Supply is true and correct in all respects.

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26. **CANCELLATION.** Unless the cancellation is due to a default by Seller, once an order is placed with and accepted by Manna Supply, the order cannot be cancelled, unless Manna Supply consents in writing. If an order is cancelled, Buyer shall reimburse Seller for any cost it incurs as a result of such cancellation, including but not limited to cancellation or restocking fees.

27. **LIMITATION OF DAMAGES.** IN NO EVENT WILL MANNA SUPPLY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING OUT OF CUSTOMER'S PURCHASE, USE OR SALE OF GOODS SOLD BY MANNA SUPPLY TO CUSTOMER. CUSTOMER'S EXCLUSIVE REMEDY SHALL BE AGAINST THE MANUFACTURER OF THE GOODS SOLD PURSUANT TO THE TERMS OF THE MANUFACTURER'S WARRANTY.

28. **INDEMNITY.** (a) Customer agrees to indemnify and hold harmless Manna Supply: (1) from and against any and all liability for any and all claims for injury, loss, accident or damage to person or property, including death; and (2) from any and all claims, losses, expenses, damages or other costs which Manna Supply might incur, as a result of Customer's use or installation of the goods purchased by Customer from Manna Supply. Customer further agrees that it will defend Manna Supply, at Customer's sole expense, against any and all lawsuits, actions, claims, demands or the like which may be filed or made against Manna Supply arising out of any goods sold by Manna Supply to Customer, and Customer shall reimburse Manna Supply for any legal fees or costs incurred by Manna Supply to defend such actions; and (b) with respect to goods manufactured either in whole or in part from Customer specifications, Customer agrees to protect and indemnify Manna Supply against all claims for damages arising from alleged infringements to patents, designs, copyrights or trademarks.

29. **FORCE MAJEURE.** Manna Supply shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority, act of Customer, embargo, delays in transportation, or due to any other cause beyond Manna Supply' reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time equal to the time lost by such delay.

30. **DEFAULT.** The occurrence of any of the following shall, at the option of Manna Supply and without notice or demand on Customer, constitute an event of default by Customer: (a) failure of Customer to make any payment to Manna Supply when due; (b) failure of Customer to observe or perform any of Customer's other obligations under these Terms; (c) if any statement of Customer contained in Manna Supply's Application for Credit and Credit Agreement ("Agreement") shall be false; (d) death of Customer or any guarantor; or (e) if Customer shall become insolvent, make an assignment for the benefit of creditors institute or have instituted against Customer bankruptcy, insolvency, reorganization, arrangement, debt adjustment or liquidation proceedings. If Customer fails to comply with these Terms, or Customer's credit becomes unsatisfactory in Manna Supply's sole discretion, Manna Supply reserves the right to terminate Customer's account and/or terminate or restrict any order.

31. **THIRD PARTY CONTRACT OBLIGATIONS.** In the event that Buyer has contracted for or otherwise assumed with any other Party any obligation or liability to an Owner, Contractor, Construction Manager or any other person or entity responsible for the completion of any portion of any project in which Seller's goods will be used, the Parties agree that Seller is not a party to such contract, and Seller does not assume any liability or obligation under any such contract or agreement unless expressly agreed to in writing. Buyer shall not be permitted to delay, set-off or condition any payment obligation because of any third party obligation or condition, including but not limited to retainage conditions or "pay-when- paid" terms between Buyer and a third party. Buyer releases and agrees to defend, indemnify and hold Seller harmless for any claims of any nature whatsoever related to any obligation, risk, liability or responsibility which was Buyer's under any contract or which was assumed by Buyer towards any Owner, Contractor, Construction Manager or other party involving the goods or work supplied by Seller to fulfill any contractual requirement.

32. **CHANGE OF TERMS AND CONDITIONS.** Buyer acknowledges and agrees that Manna Supply may change any term or part of these terms and conditions as to open accounts by sending Buyer a written notice at least 10 days before the change is to become effective. If Buyer does not agree to this change, Buyer must notify Manna Supply within 10 days after the effective date of the change, in which case Buyer's accounts will be closed and must pay Manna Supply any outstanding invoices under the existing terms of the unchanged terms and conditions for such business accounts. Placement of a new order after the effective date of any change shall be deemed acceptance of the new terms and conditions, even if the aforementioned 20 days have not yet expired.

33. **MBE APPLICABILITY.** Manna Supply is a certified MBE (minority business enterprise) under certain jurisdictions, the certifications of which are available at www.mannasupply.com. Under no circumstances shall Manna Supply be responsible for proper application of

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MBE credit on behalf of electrical contractors, general contractors or construction managers. It is fully the contractors' responsibility to ensure the MBE certification is properly applied.

34. OTHER TERMS AND CONDITIONS. No terms and conditions other than those herein stated, and no agreement or understanding, including but not limited to any provisions, terms and conditions contained in any confirmation order or other writing by Buyer, in any way purporting to modify these terms or conditions shall be binding upon Manna Supply unless consented to in writing by an Officer of Manna Supply. The invalidity in whole or in part of any of these terms and conditions shall not affect the validity or enforceability of any other term or condition. MANNA SUPPLY'S ACCEPTANCE OF YOUR PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THESE TERMS AND CONDITIONS AND ON YOUR AGREEMENT THAT SUCH TERMS AND CONDITIONS SHALL CONSTITUTE THE SOLE TERMS AND CONDITIONS OF THE ORDER. THE CONDITIONS STATED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS, AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON THE SELLER, INCLUDING BUT NOT LIMITED TO PROVISIONS OR CONDITIONS WHICH DEEM PARTIAL PERFORMANCE OR FAILURE TO OBJECT AS ACCEPTANCE BY MANNA SUPPLY OF BUYERS TERMS AND CONDITIONS, UNLESS ACCEPTED BY THE SELLER IN WRITING.

35. RIGHTS CUMULATIVE. Manna Supply retains all rights and remedies provided under law and equity. Manna Supply's rights and remedies are cumulative and not alternative. Waiver of any default shall not constitute waiver of any subsequent default. Any forbearance by Manna Supply to enforce any provision of these Terms shall not constitute a waiver or relinquishment by Manna Supply of any of its rights or remedies hereunder.

36. NOTICE. Any written notice required under the Agreement and these Terms shall be sent by a means which provides a proof of delivery, including, but not limited to, facsimile, email, certified mail return receipt requested and overnight delivery service.

37. SIGNATURES. A facsimile or electronic signature shall have the same force and effect as an original signature affixed hereto.

38. ENTIRE AGREEMENT. These terms and conditions shall constitute the entire agreement between the parties with regard to the subject matter. The parties shall not be bound by any agent's or employee's representation, promise, or inducement not set forth in these terms or the signed agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of these terms and conditions. Acceptance of or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of these terms and conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings or agreements have been made or relied upon in the making of the agreement other than those specifically set forth herein. These terms and the terms of the signed acceptance can only be modified by a writing signed by the parties hereto or their duly authorized agents.

40. TERMS AND CONDITIONS RECEIPT. BUYER AGREES TO AND ACKNOWLEDGES RECEIPT OF THESE TERMS AND CONDITIONS IRRESPECTIVE OF IN HAND DELIVERED OR THROUGH VIEWING ONLINE AT www.mannasupply.com.

41. BINDING. The terms of the Agreement and these Terms shall be binding upon the Customer's heirs, executors, administrators, personal representatives, successors or assigns. These foregoing terms and conditions are bound and shall not be edited, modified, changed or otherwise adjusted in any manner without the express written authorization of an officer (executive) of Manna Supply. Any edit, modification, change or adjustment by anyone other than a Manna Supply officer (executive) shall be deemed not authorized and shall have no effect on the foregoing terms and conditions.

42. INVALID PROVISIONS. If any provision of the Agreement and these Terms is found by any court of competent jurisdiction to be prohibited or unenforceable, such provision shall be ineffective only to the extent of such invalidity or unenforceability, and such prohibition or unenforceability shall not invalidate any other provision.

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