

Sales Agreement and Limited Warranty

1. **SALES AGREEMENT.** The terms of this Agreement govern all past, present and future sales by Benner Metals Corporation (“Seller”), to you, the Buyer. All sales are final. **This document constitutes Buyer’s agreement that any additional or different terms contained in Buyer’s oral or written offer or acceptance shall not apply to any sales or other transactions between Seller and Buyer.** In other words, this document contains the sole and exclusive terms for this and all future sales. No agreement between Seller and Buyer shall create a third party beneficiary agreement. No general contractor or other third party may rely upon performance of this agreement by Seller
2. **QUOTATIONS.** Quotations from Seller shall be considered an offer to sell, however, quoted prices are subject to change without notice. Purchase orders from Buyer shall be considered acceptance of Seller’s offer to sell as stated in a Seller prior quote or in a subsequent confirmation or invoice. No verbal statements, promises or understandings shall be binding on Seller or on Buyer, until or unless confirmed in a Seller written quotation, confirmation, or invoice and then **the provisions of this Agreement shall constitute the sole and entire agreement.**
3. **PAYMENT.** Payment is requested within 30 days of the date of invoice. Seller shall be entitled to service charges (a time-price differential) on any invoice not paid within 30 days. Service charges shall be charged at the rate of 1.5% per month on balances of \$5,000 or more and 2.0% per month on balances under \$5,000. **Payments on any invoices or orders shall be made to Seller at 1220 S. State College Boulevard, Fullerton, CA 92831.** Invoices shall not be considered past due until the 60th day after the date of the invoice. However, failure to pay invoices within 45 days may result in the cessation of credit sales or in the reduction of the amount of credit allowed. In the event Buyer fails to make payment on any invoice within 60 days of invoice date, Buyer shall be in breach of this Agreement and Seller may elect to declare Buyer’s entire account immediately due and payable.
4. **PRICE.** An invoice will be mailed, faxed or emailed to Buyer after the goods are delivered. If Buyer believes that any price is incorrect, Buyer must notify Seller, in writing, within ten days from the date Buyer receives the invoice or the invoice price shall conclusively be presumed to be the agreed upon price. The notice must be sent to Seller by certified return receipt requested mail.
5. **DELAYS.** Any and all delivery dates given by Seller are estimates only. Buyer is cautioned to make allowance for delays and Buyer is warned that Seller **shall not be liable to Buyer, nor to anyone else, for delays.**
6. **CLAIMS PROCEDURE.** Buyer must make any claim for shortage, defect, nonconformity, damage, non-delivery, or for anything else to Seller, in writing, by certified return receipt requested mail, within ten days of the date Buyer discovered or could have reasonably discovered the problem, but in no event later than thirty days from the date the goods are delivered (or, in the case of non-delivery, within thirty days of the date of the priced invoice). **Buyer’s failure to strictly comply with the claims procedure set forth in this section shall be a complete bar to any claim or to any setoff.** Any suit against Seller must be filed within one year after the invoice date. **Failure to file suit within one year shall be a complete bar to any setoff or to any recovery against Seller.**
7. **RETURNS.** Goods may not be returned to Seller for credit without Seller’s prior written consent. **Buyer must examine the goods prior to installing, altering or otherwise using the goods.** If the claimed defect, non-conformity, or damage could have been discovered through the exercise of reasonable investigation and care, used goods will not be accepted for return or credit. Buyer will be responsible for paying a restocking charge of 15% of the item(s) price or a minimum charge of \$15.00 on all returns. No returns will be accepted 15 days after date of invoice. Returns will not be accepted on cut material, processed material, or remnant material. Some items may incur additional restocking fees if returned due to the nature of the material.
8. **REPRESENTATIONS AND WARRANTIES.** There have been no representations or warranties made by Seller with respect to the goods listed on the front hereof, except that the goods conform to the description of quantity and kind. **All implied warranties of merchantability and fitness for a particular purpose and all other implied warranties are excluded.**
9. **LIMITATIONS OF LIABILITY.** Any liability of Seller which relates to the sale, manufacture, delivery, resale, installation, or use of any goods sold by or furnished by Seller, whether arising out of or related in any way to any contract, negligence, strict tort, warranty or anything else, shall be limited to Seller’s choice of any one of the following: (a) the repair of goods by Seller (b) the replacement of the goods; or, (c) the cancellation of the contract. Buyer’s return of the goods in question to Seller, and Seller’s refund of the purchase price to Buyer. These remedies are exclusive. In addition, **Seller shall not, under any circumstances, be responsible for special, economic, consequential or incidental damages** such as, but not limited to: loss of profits, revenue or reputation; loss of purchased or replaced goods; or damages caused by delays, back-charges, or loss of use. **The goods are sold as is.**
10. **ATTORNEY’S FEES AND SUIT.** In the event of a lawsuit, brought by Buyer or by Seller, related to the sale of the goods, the successful party shall be entitled to: (i) attorney’s fees in the amount of 40% (but not less than \$1,500.00) of the claim, if the claim is \$5,000.00 or less; or, (ii) attorney fees in the amount of 35% of the claim, if the claim is over \$5,000.00. If the defendant files an Answer (even if the Answer is allowed to be filed by the Court after a default has been entered and/or even if the Answer is ultimately stricken), the successful party shall be entitled to reasonable attorney’s fees not limited to either percentage formula in (i) or (ii) above. In addition, the successful party shall be entitled to request and receive post judgment collection costs and attorney’s fees, whether the judgment awarding attorney’s fees was based on the percentage formula or on the reasonable attorney’s fee provision. Any suit where arising from contract, tort or otherwise, must be brought in the Orange County Superior Court (Central Justice Center, Santa Ana), or in the Federal District Court in Orange County. If Seller assigns Buyer’s past due account to a collection agency for collection, Buyer agrees to pay the agency’s collection fee. Buyer shall pay \$30.00 to Seller for each and every check issued by Buyer and returned unpaid to Seller. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
11. **SEVERABILITY.** If any part of this Agreement is held invalid or unconscionable, that part shall be fully severable, and the remaining provisions shall remain in full force and effect.
12. **ENTIRE AGREEMENT.** **This document, any signed written agreement, and any signed credit application, constitute the entire understanding between Buyer and Seller** and supersede all prior oral representations, warranties, statements, promises and understandings with respect to the subject matter hereof, and may not be modified or terminated, except by a document, in writing, signed by the parties hereto. Neither Seller nor Buyer have made any promises or representations to induce the other to enter into this Agreement and neither is relying upon any promise or representation not contained in this Agreement, in a signed credit application, or in other document referred to herein.
13. **WAIVERS.** Seller may delay exercising or may omit to exercise any right or remedy, without waiving that or any other past, present or future right or remedy, except in writing by Seller. Seller’s consistent waiver of any right or remedy shall not modify the terms of this Agreement, nor establish a “course of dealing” which could be construed as a waiver of any of the provisions of this Agreement.
14. **COLLATERAL RECOVER.** If Seller seeks to recover payment from a collateral source (such as foreclosure against real property on a Mechanic’s Lien claim), Seller shall be entitled to deduct all of its cost and actual attorney’s fees (whether or not some or all of those fees are included in a Court award or in a settlement agreement) from any recovery before determining the amount to be credited against Buyer’s account. Furthermore, in the event that Seller is unsuccessful in its attempt to recover from a collateral source, Seller’s reasonable costs and attorney’s fees may be added to Buyer’s account. Seller may proceed against a collateral source at any time regardless of the aging of Buyer’s invoices.
15. **INDEMNIFICATION.** Buyer shall defend, indemnify, and hold Seller harmless from and against any and all claims by third parties for delays or other damages that are excluded by Sections 5 and 9 of this Agreement.