

SALES AGREEMENT AND LIMITED WARRANTY

1. **SALES AGREEMENT.** The terms of this Agreement govern all past, present and future sales Acme Metals & Steel Supply, Inc. ("Acme"), 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 ACME and Buyer.** In other words this document contains the sole and exclusive terms for this and all future sales. No agreement between ACME and Buyer shall create a third party beneficiary agreement. No general contractor or other third party may rely upon performance of this agreement by ACME.

2. **QUOTATIONS.** No verbal statements, promises, or understandings shall be binding on ACME or on Buyer, until or unless confirmed in an ACME 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 the invoice. ACME shall be entitled to service charges (a time-price differential) on any invoice not paid within thirty days. Service charges shall be charged at the rate of 1.5% per month. **Payments on any invoice that is 60 days or older shall be made to ACME at 16027 Ventura Blvd., Suite 503 Encino, California 91436.** Invoices shall not be considered past due until the 90th day after the date of the invoice. In the event Buyer fails to make payment on any invoice within 90 days of invoice date, Buyer shall be in breach of this Agreement and ACME may elect to declare Buyer's entire account immediately due and payable. The preceding provisions of this Section 3 notwithstanding: (i) if any invoice is not paid within 90 days, all invoices shall become immediately due and payable; and, (ii) ACME may, for the purpose of perfecting a mechanics' lien claim, a stop notice claim, and/or a bond claim on a private or public works job, treat any invoice as due and payable. ACME shall have the absolute right to periodically increase or decrease the amount of credit allowed or to completely cease or resume credit sales to Buyer.

4. **PRICE.** An invoice will be mailed to Buyer after the goods are delivered. If Buyer believes that any price is incorrect, Buyer must notify ACME, in writing, within ten days of 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 ACME by certified return receipt requested mail.

5. **DELAYS.** Any and all delivery dates given by ACME are estimates only. Buyer is cautioned to make allowance for delays and Buyer is warned that **ACME 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 ACME, 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 waiver and bar to any claim or to any setoff.** Any suit against ACME must be filed within one year after the invoice date. **Failure to file suit within one year shall be a complete waiver and bar to any setoff or to any recovery against ACME.**

7. **RETURNS.** Goods may not be returned to ACME for credit without ACME'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.

8. **REPRESENTATIONS AND WARRANTIES.** There have been no representations or warranties made by ACME with respect to the goods listed on the front hereof, except that the goods conform to the description of quantity and kind. **The goods are sold as is.**

9. **LIMITATIONS OF LIABILITY.** Any liability of ACME which relates to the sale, manufacture, delivery, resale, installation, or use of any goods sold by or furnished by ACME, whether arising out of or related in any way to any contract,

negligence, strict tort, warranty or anything else, shall be limited to ACME'S choice of any one of the following: (a) the repair of goods by ACME; (b) the replacement of the goods; or, (c) the cancellation of the contract, Buyer's return of the goods in question to ACME, and ACME'S refund of the purchase price to Buyer. **Buyer waives all other remedies.** In addition, **ACME 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. **ATTORNEYS FEES AND SUIT.** In the event of a lawsuit, brought by Buyer or by ACME, related to the sale of the goods, the successful party shall be entitled to attorneys' fees: (i) 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) attorneys' fees in the amount of 33.3% 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 attorneys' fees. In addition, the successful party shall be entitled to request and receive post judgment collection costs and attorneys' fees, whether the judgment awarding attorneys fees was based on the percentage formula or on the reasonable attorneys' fee provision. Any suit, whether arising from contract, tort or otherwise, must be brought in the Los Angeles Superior Court (Northwest District, Van Nuys), or in the Federal District Court in Los Angeles. Buyer shall pay \$50.00 to ACME for each and every check issued by Buyer and returned unpaid to ACME. 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 ACME 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 ACME 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 any other document referred to herein.

13. **WAIVERS.** ACME 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 ACME. ACME'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 RECOVERY.** If ACME seeks to recover payment from a collateral source (such as foreclosure against real property on a Mechanic's Lien claim), ACME shall be entitled to deduct all of its costs and actual attorneys' 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 ACME is unsuccessful in its attempt to recover from a collateral source, ACME'S reasonable costs and attorneys' fees may be added to Buyer's account. ACME 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 ACME 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.

16. **FACSIMILE.** A facsimile copy or any electronically stored and printed copy of a fax or the original shall be deemed an original.