



TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1. Applicability.

(a) These terms and conditions of purchase (these "**Terms**") are the only terms which govern the purchase of the goods ("**Goods**") and services ("**Services**") by Banner Metals Group, Inc. ("**Buyer**") from the seller named on the purchase order accompanying these Terms ("**Seller**"). Buyer or Seller may be referred to herein as a "**Party**" or, collectively, as the "**Parties**". Notwithstanding anything herein to the contrary, if a written contract signed by the Parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying purchase order (the "**Purchase Order**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of this Purchase Order constitutes acceptance of these Terms.

2. Delivery of Goods and Performance of Services.

(a) Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the Parties (the "**Delivery Date**"). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. Buyer has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date.

(b) Seller shall deliver all Goods to the address specified in the Purchase Order (the "**Delivery Point**") during Buyer's normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's risk of loss and expense.

(c) Seller shall provide the Services to Buyer as described and in accordance with the schedule set forth on the Purchase Order and in accordance with the terms and conditions set forth in these Terms.

(d) Time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in this Agreement.

3. Quantity. If Seller delivers more than 10% or less than 10% the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. Shipping Terms. Delivery shall be made in accordance with the terms on the Purchase Order. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

6. Inspection and Rejection of Nonconforming Goods. Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 20. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

7. Price. The price of the Goods and Services is the price stated in the Purchase Order (the "**Price**"). Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties, and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

8. Payment Terms. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. Buyer shall pay all properly invoiced amounts due to Seller within 60 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller under this Agreement. In the event of a payment dispute, Buyer shall notify Seller on the disputed invoice and provide a reasonably detailed description. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 8. Buyer and Seller shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

9. Seller's Obligations Regarding Services. Seller shall:

(a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;

(b) comply with all rules, regulations and policies of Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;

(c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve.

(d) obtain Buyer's written consent, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Buyer's approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier;

(e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer;

(f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;

(g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and

(h) keep and maintain any Buyer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Buyer's written instructions or authorization.

10. Change Orders. Buyer may at any time, by written instructions and/or drawings issued to Seller (each a "**Revised Purchase Order**"), order changes to the Services. Seller shall upon receipt of a Revised Purchase Order submit to Buyer a firm cost proposal for the Revised Purchase Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Revised Purchase Order may or may not entitle Seller to an adjustment.

11. Warranties.

- (a) Seller warrants to Buyer from the Delivery Date, all Goods will:
- (i) be free from any defects in workmanship, material and design;
 - (ii) conform to applicable specifications;
 - (iii) be fit for their intended purpose and operate as intended;
 - (iv) be merchantable;
 - (v) be free and clear of all liens, security interests or other encumbrances;
 - (vi) not infringe or misappropriate any third party's patent or other intellectual property rights.

These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer;

(b) Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and

(c) the warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer, and, if applicable, (ii) repair or re-perform the applicable Services.

12. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer's subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Goods and Services purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller's obligations hereunder will not be limited to the extent of any insurance available to or provided by Seller. Seller shall not enter into any settlement without Buyer's prior written consent.

13. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

14. Limitation of Liability. Nothing in this Agreement shall exclude or limit (a) Seller's liability under Sections 11, 12 and 13 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

15. Insurance. During the term of this Agreement and for a period of two (2) years after the termination or expiration of the Order thereafter, Seller shall, at its own expense, maintain and carry in full force and effect commercial general liability (including product liability), casualty, property and other lines of insurance of the types, on the terms and in the amounts commensurate with its business risks associated therewith. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

16. Code of Conduct. Supplier shall adopt and comply with a code of conduct or policy statement regarding business conduct, ethics, and compliance that satisfies, at a minimum, the principles and expectations set forth in the Banner Metals Group Supplier Code of Conduct. Supplier must have management systems, tools, and processes in place that (a) ensure compliance with applicable laws and regulations and the requirements set forth in the Supplier Code of Conduct; (b) promote the awareness of and commitment to ethical business practices, including, without limitation, the expectations set forth in the Supplier Code of Conduct; (c) facilitate the timely discovery, investigation (including cooperation with any Buyer initiated investigation involving Supplier), disclose (to Buyer and others as appropriate) and implementation of corrective actions for violating law, regulations, this Agreement, or an Order,(d) provide training to its employees on compliance requirements, including the expectations set forth in the Supplier Code of Conduct.

17. Compliance with Law. Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods. Seller warrants that the Goods delivered hereunder were produced at facilities complying with all applicable provisions of occupational safety and health legislation and related regulations, and agrees to provide Buyer, upon request, with all explanatory and factual information needed to verify such compliance.

18. Hazardous and Dangerous Goods and Materials. Seller warrants: (a) that any chemical substance or mixture delivered to Buyer pursuant to this Agreement is on the Toxic Substance Control Act inventory or that the pre-manufacture notice requirements thereof have been satisfied and such chemical substance or mixture is lawfully available for sale and use; (b) that chemical substances or mixtures delivered hereunder will be properly packaged with all appropriate warning labels, instructions for use, and notices, and that, if such chemical substances or mixtures are supplied in bulk, Seller will provide Buyer with an adequate supply of such warning labels, instructions, and notices for use in Buyer's facilities; (c) that Seller will supply with, or before, delivery, and at any other time upon Buyer's request, all information known to Seller with respect to potential hazards, including possible toxic or harmful effects, related to the handling, use, storage, disposal, or transportation of any chemical substances or mixtures delivered hereunder, and any precautions that should be taken to eliminate or reduce to a minimum such hazards; and (d) that Seller will ascertain and furnish all information about Goods required by Buyer to comply with all safety-related laws and regulations (including, without limitation, those relating to applicable right-to-know laws and occupational safety and health acts), and

with laws and regulations regarding composition, ingredients, or otherwise, including promptly furnishing to Buyer upon written request a list of all ingredients therein and the amounts thereof and information concerning any changes in such ingredients thereafter. Seller agrees that it will, upon Buyer's request, accept the return of unused toxic or hazardous chemical substances or mixtures delivered to Buyer pursuant to this Agreement. Unless approved in writing by Buyer prior to shipment, Seller will not deliver any Goods containing asbestos in a content exceeding the local regulatory level or one percent (1%) by weight of the Goods, whichever is less.

19. Import/Export Compliance. Seller warrants that all sales made hereunder are or will be made at not less than fair value under the United States Anti-Dumping Law (19 U.S. Code § 1673 et seq.). Buyer will not be a party to the importation of the Goods, the transaction(s) represented by the Agreement will be consummated subsequent to importation, and Seller will neither cause nor permit Buyer's name to be shown as "Importer of Record" on any customs declaration. Transferable credits or benefits associated with the Goods, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by Applicable Law. Seller will provide Buyer with all information and records relating to the Goods necessary for Buyer to (a) receive these benefits, credits, and rights, (b) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (c) claim preferential duty treatment under applicable trade preference regimes, and (d) participate in any duty deferral or free trade zone programs of the country of import. Seller will be responsible for strict compliance with all legal, regulatory and administrative requirements associated with any importation or exportation of Goods, including obtaining any required licenses or approvals and, unless otherwise agreed between Buyer and Seller elsewhere in this Agreement, the payment of all associated duties, taxes and fees.

20. Duty Drawback. Upon request of Buyer, Seller will cooperate with Buyer in seeking any duty drawback available to Buyer in connection with export by Buyer of any Goods imported by Seller and provided to Buyer under this Agreement, or incorporating, or manufactured by Buyer from, such Goods. Without limitation, Seller will (a) provide all information with respect to such imported Goods necessary to complete any such drawback claims to be filed by Buyer, including U.S. Customs Service entry numbers, dates of entry, quantities and description of goods, customs values, and rates and amounts of customs duties paid by Seller, and (b) execute applicable certificates of delivery and other documents as necessary in connection with Buyer's drawback claims.

21. Termination. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or the Seller's delivery of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Agreement upon written notice to Seller. If Buyer terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by Buyer prior to the termination.

22. Limitation on Use of Payment. Seller shall not offer or use, directly or indirectly, any money, property or thing of value received by Seller under or pursuant to this Agreement to influence improperly or unlawfully any decision, judgment, action or inaction of any official, employee or representative of any government or agency or instrumentality thereof, or of any government owned or partially government owned entity, or any other person or entity, in connection with or relating to the subject matter of this Agreement or any supplement or amendment hereto. No payment shall be made nor shall any transaction be entered into in connection with this Agreement that is illegal, improper or is intended to unduly or improperly influence any third party, including without limitation, by means of

extortion, any kickback or bribery. If Seller breaches the terms of this provision, Buyer may immediately terminate the Purchase Order without any liability.

23. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

24. Confidential Information. All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

25. Force Majeure. Neither Buyer nor Seller shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, without such Party's fault or negligence, and which by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Seller from carrying out its obligations under this Agreement for a continuous period of more than (7) seven business days, Buyer may terminate this Agreement immediately by giving written notice to Seller.

26. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer's assets.

27. Relationship of the Parties. The relationship between Buyer and Seller is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No employee, agent, or representative of Seller or Permitted Subcontractor will be deemed to be an employee of Buyer.

28. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of Buyer and Seller and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

29. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Ohio.

30. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in the City of Columbus and County of Franklin, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

31. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the Parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

32. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

33. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 15, 16, 24, 29, 30 and 34.

34. **Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each of Buyer and Seller.