



Terms of Sale

ALL WORK IS PERFORMED SUBJECT TO THE FOLLOWING TERMS:

THE BUYER OF METAL TREATING SERVICES FROM THE SELLER, UNDERSTANDS THAT EVEN AFTER EMPLOYING ALL THE SCIENTIFIC METHODS KNOWN TO THE SELLER, HAZARDS STILL REMAIN IN METAL TREATING. THE BUYER THEREFORE AGREES THAT SELLER'S LIABILITY SHALL NOT EXCEED TWICE THE AMOUNT OF THE CHARGES FOR THE WORK DONE ON ANY MATERIAL. THE BUYER AGREES AND UNDERSTANDS THAT THIS LIMITATION OF LIABILITY IS NOT AN EXCULPATORY CLAUSE. THE REIMBURSEMENT AND FULL LIABILITY OF THE SELLER SHALL NOT EXCEED TWICE THE AMOUNT OF THE CHARGES FOR THE WORK DONE BY THE SELLER ON ANY MATERIAL. THIS IS INTENDED TO REIMBURSE THE BUYER FOR THE CHARGES AND TO FULLY COMPENSATE THE BUYER IN THE AMOUNT OF THE CHARGES. THIS TERM APPLIES TO ALL WORK DONE BY THE SELLER EXCEPT WHERE OTHERWISE AGREED TO IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE SELLER.

1. General

All QUOTATIONS are provided in accordance with these TERMS OF SALE. All ORDERS by BUYER are subject to acceptance by Heat Treating Services Corporation of America (SELLER). Acceptance of an ORDER is expressly limited to these TERMS OF SALE and in the terms and conditions contained in the QUOTATION, and any additional or different terms and conditions contained in BUYER's ORDER or response hereto shall be deemed objected to by SELLER and shall be of no effect nor in any circumstances binding upon SELLER, unless expressly agreed otherwise in writing by SELLER.

2. Quotations

Unless previously withdrawn, SELLER's QUOTATION is open for acceptance within the period stated therein or when no period is stated, within 30 days from the date of SELLER's QUOTATION.

3. Services and Goods

All descriptions and illustrations contained in SELLER's brochures, web-site, price lists and advertisements and all specifications, drawings and particulars of thermal processes and weights and dimensions contained therein submitted with any quotation to BUYER or otherwise communicated to BUYER are intended merely to present a general idea of SERVICES and GOODS described therein and nothing contained in any of them shall form any part of the contract unless otherwise stated in SELLER's QUOTATION. SERVICES include, but are not limited to, thermal processing, blasting with abrasive material, material and component testing, and material transportation and furnace repairs related to BUYER owned material and / or equipment. GOODS include, but are not limited to, manufactured subassemblies and products.

4. Price

Unless otherwise specified in SELLER's QUOTATION the price excludes the cost of delivery of SERVICES and / or GOODS. Price includes such taxes as payroll taxes, unemployment taxes and social security taxes of employees of SELLER. The prices quoted herein do not include any federal, state, or other taxes including duties or other import / export fees levied on the SERVICES or GOODS, or their use or sale. Such taxes, where SELLER is required by law to collect them, whether designated as sales tax, use tax, gross receipts tax, etc., will be billed to BUYER based on the law in effect at the time of delivery unless BUYER furnishes SELLER with a proper tax exemption certificate. BUYER agrees to reimburse SELLER for any such taxes which SELLER or its suppliers are required to pay. BUYER agrees to reimburse SELLER for any additional costs attributed to changes in the specifications, directions, or design of the SERVICES (e.g. thermal processes), and / or GOODS furnished hereunder which are requested by BUYER. SELLER will issue a supplementary quotation to BUYER covering such changes and will not proceed with their implementation prior to receiving BUYER approval.

5. Variation, Delay and Cancellation

If SELLER is prevented from proceeding with the order by reason of delay or suspension by the BUYER, any costs reasonably incurred by SELLER as a result of such events shall be reimbursable to SELLER. Any request by the BUYER for deferral of delivery shall also result in additional costs which will be charged to the BUYER. Upon BUYER's request, SELLER will complete the SERVICE, or manufacture of GOODS, invoice BUYER and hold SERVICED material and / or manufactured GOODS for the BUYER at BUYER's risk and expense. If BUYER wishes to cancel the ORDER at any time, BUYER shall notify SELLER formally in writing. SELLER will make safe all partly finished SERVICED materials, and / or manufactured GOODS and terminate all incomplete sub orders and / or subcontracts. The costs of all work up to the time of cancellation, together with all costs incurred in making safe partly finished SERVICED materials, and / or manufactured GOODS and any cancellation costs incurred by SELLER, plus a reasonable profit, will be charged to BUYER. Under such circumstances, finished or partly finished SERVICED materials and / or GOODS will become BUYER's property with the agreed terms of payment.

6. Payment

Terms of payment shall be as specified in the QUOTATION and, unless otherwise agreed, payment shall be made within 30 days from the date of invoice. No discounts shall be provided for payments earlier than 30 days. Late payments shall accrue interest at the rate of one and one half percent (1.5 %) per month, or the highest interest rate allowable by applicable law, whichever is lower. BUYER shall pay all of SELLER's costs and expenses (including reasonable collection agency and attorney's fees) to enforce and preserve SELLER's right to collect all amounts payable by BUYER to SELLER. In addition, in the event that BUYER becomes delinquent in the payment of any sum due to SELLER, SELLER shall have the right to suspend performance under any ORDERS until such delinquency is corrected. Partial shipments made under any ORDER shall be treated as a separate transaction and payment thereof shall be made accordingly. In the event of any default by BUYER, SELLER may decline to make further shipments without in any way affecting its rights under such ORDER or any other ORDERS or agreements between SELLER and BUYER.

7. Pre-delivery Inspection / Tests

All SERVICES and / or GOODS supplied pursuant to the ORDER will be subjected to SELLER's standard inspection and test procedures prior to

shipment together with any additional tests and / or inspection identified in SELLER's QUOTATION. Should BUYER require any additional testing or inspection, or to be present at SELLER's standard testing, such attendance and any additional testing required by BUYER's then defined requirements will constitute a change to the ORDER and all additional costs will be payable by BUYER.

8. Delivery

Unless otherwise stated in SELLER's QUOTATION, delivery dates are estimates only and are based, among other things, on the timely receipt of full and final technical information from BUYER. SELLER shall not be liable for any loss, liability, damages (whether direct, indirect or consequential) or other obligations because of any delay or failure to deliver all or any part of any ORDER for any reason, including, without limitation, SELLER's active or passive negligence or any cause beyond SELLER's control. The SELLER shall be entitled to deliver the SERVICED material and / or GOODS in one or more consignments unless otherwise expressly agreed. Delivery shall be deemed to take place when SELLER or his agent shall have delivered the SERVICED material and / or GOODS to the point of delivery defined in the ORDER. Unless otherwise specified in SELLER's QUOTATION, BUYER shall be responsible and assumes all risk for unloading the SERVICED material and / or GOODS at the point of delivery. If SELLER does not receive sufficient delivery instructions to enable it to dispatch the SERVICED material and / or GOODS within 14 days of notification of BUYER that the SERVICED material and / or GOODS are ready for dispatch, they shall be deemed to have been delivered for payment purposes.

9. Passing Of Risk And Property

Risk of loss of or damage to the SERVICED material shall pass to the BUYER at the time the SERVICED material reach the delivery point which shall be the shipping dock of SELLER's facility, unless a different delivery point is specified and agreed to by SELLER in writing. SELLER shall not be liable for any loss of any kind to BUYER arising from any damage to the SERVICED material occurring after the risk has passed to BUYER however caused, nor shall any liability or obligation of BUYER to SELLER be diminished or extinguished by reason of such loss.

10. Inspection of SERVICED Material And / Or GOODS

BUYER shall inspect the SERVICED material and / or GOODS immediately on receipt thereof and shall within five (5) days give notice to SELLER in detail of any grounds on which BUYER alleges that the SERVICED material and / or GOODS are damaged, defective or not in accordance with the contract. If BUYER fails to give such notice the SERVICED material and / or GOODS shall be conclusively presumed to be in all respects in accordance with the contract and free from any defect which would be apparent on reasonable examination of the SERVICED material and / or GOODS and BUYER shall be deemed to have irrevocably accepted the SERVICED material and / or GOODS accordingly. Notwithstanding the foregoing, any use of the SERVICED material and / or GOODS for any purpose after delivery therefore, including further processing, assembling or any other work, shall constitute an irrevocable acceptance of the SERVICED material and / or GOODS by BUYER.

11. Confidentiality And Intellectual Property Rights

SELLER retains for itself all of its intellectual property rights in any supporting documentation supplied hereunder, including but not limited to all designs, engineering details, thermal processes, furnace and manufacturing fixtures, and other data or information pertaining to any SERVICE and / or GOOD sold except where such rights are assigned under written agreement by a corporate officer of SELLER. No title to or ownership of any SERVICE or manufacturing procedure or any parts thereof is transferred to BUYER by any delivery of such information to BUYER hereunder.

12. Limited Warranty – Limitation Of Liability And Remedies

12.1 SERVICE Provided For BUYER Owned Material

IT IS RECOGNIZED THAT EVEN AFTER EMPLOYING ALL THE SCIENTIFIC METHODS KNOWN TO SELLER, HAZARDS STILL REMAIN IN PROVIDING PROCESS SERVICES. THEREFORE, SELLER'S LIABILITY SHALL NOT EXCEED TWICE THE AMOUNT OF SELLER'S CHARGES FOR SERVICES PERFORMED ON ANY MATERIAL (FIRST TO REIMBURSE FOR THE CHARGES AND SECOND TO COMPENSATE IN THE AMOUNT OF THE CHARGES), EXCEPT BY WRITTEN AGREEMENT SIGNED BY AN OFFICER OF SELLER. BUYER, BY CONTRACTING FOR SERVICES, AGREES TO ACCEPT THE LIMITS OF LIABILITY AS EXPRESSED IN THIS STATEMENT TO THE EXCLUSION OF ANY AND ALL PROVISIONS REGARDING STATEMENTS OF LIABILITY ON THE BUYER'S OWN INVOICES, PURCHASE ORDERS AND / OR OTHER DOCUMENTS. IF BUYER DESIRES OTHER TERMS OF LIABILITY TO BE IN FORCE AND EFFECT, THE OTHER TERMS OF LIABILITY MUST BE AGREED TO IN WRITING AND SIGNED BY AN OFFICER OF SELLER. IN SUCH EVENT, A DIFFERENT CHARGE FOR SELLER'S SERVICES, REFLECTING THE HIGHER RISK TO SELLER, SHALL BE AGREED TO BY THE BUYER AND SELLER. NO CLAIMS WILL BE ALLOWED FOR SHRINKAGE, EXPANSION, DEFORMITY, RUPTURE AND / OR ANY OTHER PHYSICAL CHANGE OF THE MATERIAL RESULTING FROM SERVICES PROVIDED BY SELLER, EXCEPT BY PRIOR WRITTEN AGREEMENT. WHENEVER BUYER SUPPLIES MATERIAL TO SELLER WITH DETAILED INSTRUCTIONS SPECIFYING THE SERVICE PROCESS, SELLER'S RESPONSIBILITY SHALL END WITH THE CARRYING OUT OF THOSE INSTRUCTIONS. FAILURE BY THE BUYER TO SPECIFY PLAINLY AND CORRECTLY THE KIND OF MATERIAL TO BE PROCESSED (SERVICED), SHALL CAUSE AN EXTRA CHARGE TO BE MADE TO COVER ANY ADDITIONAL EXPENSES INCURRED AS A RESULT THEREOF, BUT SHALL NOT CHANGE THE LIMITATION OF LIABILITY STATED ABOVE.

12.2 Warranty Liability Limitations

EXCEPT FOR THE EXPRESS WARRANTY STATED ABOVE, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND DISCLAIMS ALL WARRANTIES FOR TRADE OR SAMPLES PREVIOUSLY SUPPLIED. THE STATED WARRANTY AND REMEDY PROVIDED ARE IN LIEU OF OTHER POSSIBLE LIABILITY AND DAMAGES AGAINST SELLER AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM THE BREACH OF THIS WARRANTY OR ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, THE QUOTATION, THE PURCHASE ORDER AND / OR ANY AGREEMENT BETWEEN BUYER AND SELLER OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND / OR GOODS OR THEIR SALE, DELIVERY, DISTRIBUTION, INSTALLATION, MAINTENANCE, OPERATION, SERVICE, PERFORMANCE OR USE, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF USE, LOST REVENUES, LOST PROFITS, DAMAGE TO ASSOCIATED EQUIPMENT OR TO FACILITIES, LOST DATA, COSTS OF SUBSTITUTED GOODS, EQUIPMENT FACILITIES OR SERVICES, AND ANY SIMILAR OR DISSIMILAR LOSSES, COSTS OR DAMAGES, WHETHER BASED ON WARRANTY, CONTRACT, STRICT LIABILITY OR NEGLIGENCE. IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED TWO (2) TIMES THE CHARGES FOR PROVIDING SERVICES FOR BUYER OWNED MATERIAL, OR THE ACTUAL COST OF CORRECTING DEFECTS IN MANUFACTURED PRODUCTS, WHICHEVER IS LESS.

13. Excusable Delays

SELLER shall not be liable for delays or failure to perform due, directly or indirectly, to (a) causes beyond SELLER's reasonable control, and (b) acts (including failure to act) of any governmental authority, wars, (declared or undeclared), electrical outages, strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, and epidemics).

- 14. Indemnity By BUYER**
BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, CLAIMS, OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) ARISING OUT OF OR RELATING TO IMPROPER SELECTION, APPLICATION, OR ABUSE OF THE SERVICED MATERIALS AND / OR GOODS. SHOULD THE SERVICED MATERIALS AND / OR MANUFACTURED GOODS BE USED IN OR WITH ANY NUCLEAR INSTALLATION OR ACTIVITY, OR AIRCRAFT AND ANY ASSOCIATED ACTIVITY, OR ANY TRANSPORTATION INSTALLATION AND ANY ASSOCIATED ACTIVITY, OR MEDICAL APPLICATION AND ANY ASSOCIATED ACTIVITY WHATSOEVER, BUYER WILL INDEMNIFY SELLER AND HOLD SELLER HARMLESS FROM ANY LIABILITY OR DAMAGE WHATSOEVER INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, ARISING OUT OF THE USE OF THE THERMALLY PROCESSED MATERIALS AND / OR MANUFACTURED GOODS IN SUCH A MANNER.
- 15. Arbitration**
If, at any time, any dispute, difference or question shall arise out of the contract or as to the rights or liabilities of the parties there under or in connection therewith or as to the construction or interpretation thereof either party shall be entitled to give notice in writing to the other requiring such dispute difference or question to be referred to arbitration under the Rules of the American Arbitration Association in Philadelphia, PA.
- 16. Proper Law**
All QUOTATIONS and ORDERS are subject to the laws of the Commonwealth of Pennsylvania and the United States of America unless otherwise agreed in writing by SELLER. If any provision of these TERMS OF SALE is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 17. Assignment**
BUYER shall not assign any benefit under the contract without the consent in writing of SELLER, which will not be unreasonably withheld.
- 18. Clause Headings**
The clause headings used in these TERMS OF SALE are exclusively for reference purposes and in the interpretation of the subject clause the applicable clause title shall not act to limit, alter or otherwise affect the content of the clause.