

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Heat Treatments" shall mean Heat Treatments Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Heat Treatments.
- 1.3 "Products" shall mean:
 - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Heat Treatments to the Customer; and
 - 1.3.2 all Products supplied by Heat Treatments to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by Heat Treatments; and
 - 1.3.4 all Products supplied by Heat Treatments and further identified in any invoice issued by Heat Treatments to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Products that are marked as having been supplied by Heat Treatments or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Heat Treatments; and
 - 1.3.6 all of the Customer's present and after-acquired Products that Heat Treatments has performed work on or to or in which goods or materials supplied or financed by Heat Treatments have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products and Services" shall mean all products, goods, services and advice provided by Heat Treatments to the Customer and shall include without limitation the design and supply of manufactured products and metal processing services and all advice and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Heat Treatments to the Customer.
- 1.5 "Price" shall mean the cost of the Products and Services as agreed between Heat Treatments and the Customer and includes all disbursements eg charges Heat Treatments pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Heat Treatments from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Heat Treatments to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by Heat Treatments to any other party.
- 3.2 The Customer authorises Heat Treatments to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by Heat Treatments at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of Heat Treatments between the date of the contract and delivery of the Products and Services.

5. PAYMENT

- 5.1 Unless otherwise agreed payment for Products and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Heat Treatments in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by Heat Treatments for Products and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for sixty (60) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 Heat Treatments reserve the right to alter the quotation because of circumstances beyond its control such as raw material price stability and currency variation.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

7. RISK

- 7.1 Any Products and Services remain at Heat Treatments' risk until delivery to the Customer.
- 7.2 Delivery of Products shall be deemed complete when Heat Treatments gives possession of the Products directly to the Customer or possession of the Products is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

8. AGENCY

- 8.1 The Customer authorises Heat Treatments to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.
- 8.2 Where Heat Treatments enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products supplied by Heat Treatments passes to the Customer only when the Customer has made payment in full for all Products provided by Heat Treatments and of all other sums due to Heat Treatments by the Customer on any account whatsoever. Until all sums due to Heat Treatments by the Customer have been paid in full, Heat Treatments has a security interest in all Products.
- 9.2 If the Products are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products shall remain with Heat Treatments until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be assigned to Heat Treatments as security for the full satisfaction by the Customer of the full amount owing between Heat Treatments and Customer.
- 9.3 The Customer gives irrevocable authority to Heat Treatments to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if Heat Treatments believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. Heat Treatments shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Heat Treatments may either resell any repossessed Products and credit the Customer's account with the net proceeds of

sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit the Customer's account with the invoice value thereof less such sum as Heat Treatments reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 9.4 Where Products are retained by Heat Treatments pursuant to clause 9.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 9.5 The following shall constitute defaults by the Customer:
 - 9.5.1 Non payment of any sum by the due date.
 - 9.5.2 The Customer intimates that it will not pay any sum by the due date.
 - 9.5.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.
 - 9.5.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to Heat Treatments remains unpaid.
 - 9.5.5 The Customer is bankrupt or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
 - 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 9.5.7 Any material adverse change in the financial position of the Customer.

10. SECURITY INTEREST FOR SERVICE PROVIDERS

- 10.1 The Customer gives Heat Treatments a security interest in all of the Customer's present and after-acquired property that Heat Treatments has performed services on or to or in which goods or materials supplied or financed by Heat Treatments have been attached or incorporated.

11. GENERAL LIEN

- 11.1 The Customer agrees that Heat Treatments may exercise a general lien against any Products and Services or property belonging to the Customer that is in the possession of Heat Treatments for all sums outstanding under this contract and any other contract to which the Customer and Heat Treatments are parties.
- 11.2 If the lien is not satisfied within seven (7) days of the due date Heat Treatments may, having given notice of the lien at its option either:
 - 11.2.1 Remove such Products and Services and store them in such a place and in such a manner as Heat Treatments shall think fit and proper and at the risk and expense of the Customer; or
 - 11.2.2 Sell such Products and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

12. DISPUTES

- 12.1 No claim relating to Products and Services will be considered unless made within seven (7) days of delivery.

13. LIABILITY

- 13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Heat Treatments which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Heat Treatments, Heat Treatments' liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.2 Except as otherwise provided by clause 13.1 Heat Treatments shall not be liable for:
 - 13.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products and Services by Heat Treatments to the Customer (including any damage to the Customer's property caused during the treatment process or at any time such property is in the possession of Heat Treatments) and including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by Heat Treatments to the Customer; and
 - 13.2.2 The Customer shall indemnify Heat Treatments against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Heat Treatments or otherwise, brought by any person in connection with any matter, act, omission, or error by Heat Treatments its agents or employees in connection with the Products and Services.

14. WARRANTY

- 14.1 Manufacturer's warranty applies where applicable.
- 14.2 Any written warranty that Heat Treatments provide to the Customer will also form part of these terms and conditions of trade.
- 14.3 Heat Treatments warrants that the heat treatment and other incidental work to be performed by Heat Treatments will be conducted in a good and workmanlike manner and in accordance with specifications supplied by the Customer.

15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 15.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Heat Treatments agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Heat Treatments the payment of any and all monies now or hereafter owed by the Customer to Heat Treatments and indemnify Heat Treatments against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

16. COPYRIGHT AND INTELLECTUAL PROPERTY

- 16.1 Heat Treatments, owns and has copyright in all work, software, systems, solutions, drawings, designs, specifications, electronic data and documents produced by Heat Treatments in connection with the Products and Services provided pursuant to this contract and the client may use the Products and Services only if paid for in full and for the purpose for which they were intended and supplied by Heat Treatments.
- 16.2 Where Heat Treatments has followed a design or instruction furnished by or given by the Customer, the Customer shall indemnify Heat Treatments against all damages, penalties, costs and expenses of Heat Treatments or in respect of which Heat Treatments may become liable through any work required to be done in accordance with these instructions involving an infringement of a patent, trademark, registered design or common law right.

17. CONSUMER GUARANTEES ACT

- 17.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products and Services from Heat Treatments for the purposes of a business in terms of section 2 and 43 of that Act.

18. MISCELLANEOUS

- 18.1 Heat Treatments shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.2 Failure by Heat Treatments to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Heat Treatments has under this contract.
- 18.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.