

TERMS AND CONDITIONS OF SALE

1. **WARRANTY.** ALD THERMAL TREATMENT INC. (“SELLER”) WARRANTS TO BUYER THAT AT THE TIME OF DELIVERY ALL PRODUCTS WILL CONFORM TO THE APPLICABLE WRITTEN SPECIFICATIONS OR INSTRUCTIONS. THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY STATUTORY OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE. The abovementioned warranty shall not apply to any product that has been altered, assembled or processed, other than by Seller.

2. **CONFLICTING TERMS.** These Terms and Conditions of Sale, in combination with any quotation and any order acknowledgment which may have been supplied by Seller, are intended by the parties as the final expression of their agreement and are the complete and exclusive statement of the terms and conditions of that agreement for all transactions between the parties. In the event of any conflict of terms between any quotation, order acknowledgement, purchase order, or any other form provided by Buyer and these terms and conditions, the terms and conditions contained herein shall govern. If a purchase order or any other form supplied by Buyer states terms or conditions which are additional to or different from those set forth herein, this writing shall be deemed notification of Seller’s express rejection of all such additional or different terms or conditions. Buyer’s acceptance of the conditions contained herein shall be considered to have occurred unless written notice of objection is received by Seller prior to shipment of goods or delivery of services. No modification or rescission of this agreement shall be effective unless made in writing and signed by both parties, nor shall this agreement be waived, modified, rescinded or altered by any subsequent course of dealing or performance between the parties. Buyer agrees that this agreement will apply to all products and services purchased from Seller. No modifications or additions to these Terms and Conditions of Sale shall be binding on Seller unless expressly consented to in writing by Seller’s duly authorized representative. If you should find any discrepancies or omissions in these Terms and Conditions, or in the related Quotation, please notify us promptly. If we do not receive such notice, your purchase will be regarded as meeting your full satisfaction.

3. **REMEDIES.** Promptly on receipt of each shipment, Buyer shall inspect the products and immediately notify Seller in writing of any claims. All such notifications must occur prior to the time that any further processing, assembling or any other work related to the product is undertaken. SELLER’S SOLE LIABILITY AND BUYER’S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM PRODUCTS, DELIVERY OF NON-CONFORMING PRODUCTS, SELLER’S FAILURE TO DELIVER SUCH PRODUCTS, OR SERVICES PROVIDED BY SELLER SHALL BE LIMITED TO A REFUND EQUAL TO TWO TIMES THE PURCHASE PRICE OF THE SERVICE PROVIDED FOR THE GOODS IN QUESTION. SELLER SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, PROPERTY DAMAGES, LOSS OF PROFITS, LOSS OF PRODUCTION, RECALL OR ANY OTHER LOSSES, EXPENSES OR LIABILITIES ARISING OR ALLEGED TO ARISE OUT OF OR IN CONNECTION WITH ITS PERFORMANCE HEREUNDER OR WITH ANY PRODUCT OR SERVICE SOLD HEREUNDER. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, AND SHALL APPLY EVEN WHERE SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART, BY THE NEGLIGENCE, GROSS NEGLIGENCE OR ACTS AND OMISSIONS OF THE PARTY CLAIMING DAMAGES OR THE PARTY FROM WHOM DAMAGES ARE SOUGHT. All claims under this provision -- whether arising from or relating to the delivery of non-conforming products, for non-delivery of products, shortage of material, or erroneous charges -- must be presented to Seller in writing within 5 days after delivery of the products at Buyer’s premises or such claims will be deemed waived. Buyer’s failure to indicate plainly and correctly the kind of material (i.e., proper alloy designation) to be treated by Seller, shall cause an extra charge to be made to cover any additional expense incurred as a result thereof, but shall not change the limitation of liability stated above. Seller’s charge for services is contingent the aforementioned limitations being applied as stated in this Section 3.

4. **PRICES.** The price stated in the quotation and /or the purchase order shall be a fixed and binding price, and excludes sales tax, value added tax or other equivalent tax.

5. **TAXES.** Buyer agrees to pay the amount of any excise, sales, use or occupation tax, or any other tax levied upon this transaction or upon any sale, contract, shipment or delivery incident thereto, or to furnish Seller with necessary funds for such payment, if payable by Seller, in addition to the price or prices provided herein.

6. **PAYMENT TERMS.** Unless otherwise expressly stated, Seller shall have the right to make delivery in installments, and shipper’s weights and analysis shall be final and conclusive for settlement of amounts due for the whole lot or any installment delivery. All installments shall be separately invoiced and paid within 45 days of the invoice date without regard to subsequent deliveries, and no offset shall be allowed against the payment due for each such installment. Failure to pay for any installment due shall excuse Seller from making further deliveries. Seller reserves the right to revoke any credit extended to Buyer, should Buyer fail to pay for the products or services when due or if Seller shall have any doubts at any time as to Buyer’s financial condition, and Seller shall have the right to demand payment before further shipment of any product. Seller may, without prejudice to Seller’s other rights, assess a late payment charge against the unpaid portion of any delinquent invoice amount at a rate equal to one and one-half percent per month or, if less, the maximum rate permitted by law. In the event that an attorney must be employed for the collection of any amount due hereunder, Buyer shall pay all such reasonable attorneys’ fees.

7. **NON-WAIVER.** The forbearance or failure of Seller to enforce any of these Terms and Conditions or other contract terms or to exercise any right accruing from any default or material change of financial condition of Buyer shall not work as a waiver of or affect or impair Seller’s rights in case of any continued or subsequent default or impaired financial condition of Buyer.

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8. **FORCE MAJEURE.** Seller shall not be responsible for delay in or failure of shipment or delivery, or for non-performance of contract, in whole or in part, if such delay or nonperformance shall be due to fires, floods, pandemics, epidemics, quarantine restrictions, strikes, riots, civil commotions, acts of terrorism, work stoppages, slow downs, accidents, casualties, shortages of supplies from Seller's normal sources, inability to produce or process materials, delays in transportation, however caused, affecting either Seller or Seller's suppliers, or any other cause or causes beyond Seller's control, including governmental statutes, regulations or other administrative action. If, due to any such occurrence, Seller is unable to supply the total demands for any products hereunder, Seller shall have either the right to allocate its available supply among its customers in such a manner as Seller shall deem fair and equitable, or the right to cancel such delayed shipment without further liability other than the refund to Buyer of any amounts paid by it to Seller with specific reference to the shipment so delayed.
9. **DELIVERY/RISK OF LOSS.** Delivery of the products shall be FOB Shipping Point. Buyer will pay or reimburse Seller for all freight cost. Title and all risks of loss and damage shall pass to Buyer upon delivery of the product to carrier. Buyer grants Seller a security interest in all products provided and in all proceeds thereof, until the complete purchase price and all additional costs and charges are paid by Buyer. At the request of Seller, Buyer agrees to execute such documents reasonably required to perfect Seller's security interest in the products delivered.
10. **CONFORMANCE WITH SPECIFICATIONS.** It is recognized that even after applying all scientific methods known to Seller, hazards still remain in metal treating. All product, unless otherwise agreed, are to be within the limits and tolerances in the related written specifications, provided however, in the case of shipment in several installments, any failure of Seller to perform within such standards in any one shipment shall be deemed cured to the extent that prior and subsequent shipments exceed the standard specified herein, it being understood that Seller shall be deemed to have complied with the applicable requirements if all deliveries, considered as an aggregate, conform to the standards.
11. **ASSIGNMENT.** Buyer shall not assign any of its rights or obligations hereunder without the express written consent of Seller. Seller may assign its rights and obligations hereunder without the consent of Buyer and Seller also may at any time without the consent of Buyer select an outside third party to source all or a portion of the products to be sold to Buyer under this agreement provided that such products are of a like kind and quality to the products being produced by Seller.
12. **ENTIRE AGREEMENT.** These Terms and Conditions, along with the terms and conditions set forth on the face of Buyer's purchase order that relate to the name of the Buyer, delivery address for the product, product being ordered, price, and quantity shall constitute the entire agreement between the parties. These Terms and Conditions may not be waived, changed, discharged or terminated orally or by any course of dealing between the parties and are not subject to alteration or modification, except in a writing signed by both parties.
13. **GOVERNING LAW.** Any agreement between Buyer and Seller including these Terms and Conditions shall be deemed to have been made within the State of Michigan and, in consideration of the sale and delivery of the products, this Agreement shall be governed by the laws of the State of Michigan, excluding the application of its conflicts of laws provisions.
14. **ARBITRATION.** Any controversy or claim arising out of or relating in any way to the agreement between Buyer and Seller, including, but not limited to, the enforcement of any of the provisions of the agreement, shall, to the fullest extent permitted by law, be settled by arbitration in any forum and form agreed upon by the parties or, in the absence of such an agreement, under the auspices of the American Arbitration Association ("AAA") in the State of Michigan, in accordance with AAA rules, including, but not limited to, the rules and procedures applicable to the selection of arbitrators. Judgment upon any award rendered by the arbitrator shall be final and binding and may be enforced in any court located in the State of Michigan. This paragraph 14 shall be specifically enforceable. Notwithstanding the foregoing, this paragraph 14 shall not preclude either party from pursuing a court action for the sole purpose of obtaining a temporary restraining order or a preliminary injunction in circumstances in which such relief is appropriate; provided that any other relief shall be pursued through an arbitration proceeding pursuant to this paragraph 14.
15. **ALLOCATION.** In the event of a shortage of the materials, Seller may in its own discretion allocate among its customers in such manner as it shall determine is appropriate.
16. **INDEMNITY.** It is expressly understood that any technical advice furnished by Seller with reference to the use of the products is provided free of charge and Seller assumes no obligation or liability for the accuracy of such advice or results obtained, all such advice being given and accepted at Buyer's sole risk. Buyer hereby agrees to assume full responsibility and risk for the safe handling and use of the products after shipment by Seller. Buyer agrees to indemnify, defend and hold Seller harmless for any and all liability, claims, suits, actions, costs, attorney's fees, expenses, damages, judgments or decrees resulting from personal injury (including death) or property damage arising out of the Buyer's possession, resale or any other use of the products, breach of any of Buyer's obligations under these Terms and Conditions, or any negligent act or omission of Buyer, except to the extent that such personal injury or property damage is due to the sole negligence of Seller. No provision in any of Buyer's documents varying or limiting the foregoing provisions shall be effective against Seller unless included in a writing signed by a duly authorized representative of Seller.
17. **INSURANCE.** Each party agrees to maintain at their own expense adequate insurance, including comprehensive general liability insurance to cover their respective obligations and liabilities stated in these Terms and Conditions, including coverage for bodily injury and death to persons and property damage with minimum per occurrence limits of \$1,000,000, along with workers compensation and employer's liability insurance.