

STANDARD TERMS AND CONDITIONS

1. **Terms.** All heat treatment services provided by ALD Thermal Treatment, Inc. (“ALD”) are subject to all of the terms and conditions contained herein (“Terms”) and upon no other terms and conditions. ALD’s acceptance of Customer’s purchase order is expressly made conditional upon Customer’s assent to all Terms and ALD objects to any terms or conditions at variance with, different from or additional to these Terms, unless such terms or conditions are set forth in a writing signed by a duly authorized officer or employee of ALD. Any amendment to or any waiver, modification or deletion of any of these Terms shall be ineffective unless such amendment, waiver, modification or deletion is accepted in a writing signed by a duly authorized officer or employee of ALD.
2. **Customer’s Acceptance of Terms.** By submitting a purchase order to ALD, Customer agrees to these Terms.
3. **Scope of Work.** Customer’s purchase order shall describe the tangible property provided by Customer (the “Bailed Parts”) and the thermal treatment specification required. ALD agrees to perform the services (“Services”) described in an Order Confirmation (an “Order”) issued by ALD. Each Order describes the quantity of Bailed Parts, price, delivery terms, and any special terms associated with the Services to be performed. Each Order is incorporated into these Terms by reference as though fully set forth herein. In the event any provision contained in these Terms conflicts with any provision in an Order, the provision set forth in the Order controls. Customer’s failure to indicate plainly and correctly in the applicable purchase order the type of material (e.g., proper alloy designation) to be treated by ALD, will result in an extra charge to Customer to cover additional expenses related thereto.
4. **Bailment.** Customer owns all Bailed Parts. Customer agrees to bail to ALD the Bailed Parts under these Terms. Title to the Bailed Parts remains with Customer at all times, and ALD shall acquire no right, title or interest in the Bailed Parts, except the right to possession and use necessary to perform the Services. The bailment begins when Customer delivers or causes to be delivered the Bailed Parts to ALD and will end when ALD delivers the Bailed Parts to the carrier at the shipping point agreed by the parties. ALD bears the risk of loss of Bailed Parts during the bailment period only. ALD shall immediately notify Customer of any loss or damage to the Bailed Parts during the bailment period. **CUSTOMER’S EXCLUSIVE REMEDY AGAINST ALD FOR DAMAGE TO THE BAILED PARTS IS 2X THE FEES CHARGED BY ALD FOR HEAT TREATMENT OF THE APPLICABLE PARTS.**
5. **Changes.** Customer may not modify, cancel or otherwise alter Orders after the Services are in process. Customer is liable for the price of Services once Services have begun.
6. **Payment.** Customer shall pay all invoiced amounts due, without setoff, to ALD within 45 days from the date of ALD’s invoice. Customer shall make all payments by wire transfer or check in U.S. dollars. ALD shall issue invoices after performance of Services, which may be completed in installments. Failure to pay for any installment when due will excuse ALD from further performance. ALD reserves the right to revoke any credit extended to Customer if (a) Customer fails to pay any invoice when due or (b) ALD has any doubts at any time as to Customer’s financial condition, in which case ALD has the right to demand payment before shipment of further deliverables. ALD may, without prejudice to its other rights, assess a late payment charge against the unpaid portion of any delinquent invoice amount at a rate of 1.5% per month or, if less, the maximum rate permitted by law. Customer shall reimburse ALD for all costs and expenses related to collection of past due invoices.
7. **Taxes.** In addition to the price for Services, Customer shall pay all excise, sales, use or occupation tax, or any other tax levied upon the Services or any sale, contract, shipment or delivery incident thereto, or reimburse ALD for such payment, if payable by ALD.
8. **Delivery.** The deliverables will be shipped FOB Shipping Point. Customer is liable for all freight costs. ALD has 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.
9. **Acceptance.** Customer shall inspect the deliverables for compliance with the applicable Specification immediately upon receipt of the deliverables. Failure of Customer to give written notice of non-acceptance to the carrier and ALD within 5 days of receipt shall constitute final acceptance of the deliverables. Customer hereby agrees that such five-day period is a reasonable amount of time for inspection.

10. **Warranty and Disclaimer.** ALD warrants to Customer that it shall perform the Services in a diligent, workmanlike, prompt and professional manner by individuals with the necessary knowledge, skills, expertise and training to provide the Services. At the time of delivery, all Services and deliverables will conform to the specifications, standards, drawings and descriptions set forth in the applicable Order. Notwithstanding the foregoing, Customer acknowledges and agrees that that even after applying all scientific methods known to ALD, hazards still remain in metal treating. All deliverables will be within the limits and tolerances of the related written specifications, provided however, in the case of shipment in several installments, any failure of ALD to perform within such standards in any one shipment shall be deemed cured to the extent that prior and subsequent shipments exceed the specified standard, it being understood that ALD shall be deemed to have complied with the applicable requirements if all deliveries, considered as an aggregate, conform to the standards.

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. ALD HAS NO LIABILITY FOR ANY WARRANTY CLAIMS (A) IF THE SERVICES HAVE NOT BEEN PAID FOR IN FULL, AND (B) UNLESS ALD HAS BEEN GIVEN A REASONABLE OPPORTUNITY TO EXAMINE THE SERVICES OR DELIVERABLES TO WHICH THE CLAIM RELATES AND CUSTOMER RETURNS SUCH DELIVERABLES TO ALD, UPON ITS REQUEST, BEFORE FURTHER PROCESSING, ASSEMBLY OR OTHER WORK IS UNDERTAKEN ON THE NON-CONFORMING DELIVERABLES. CUSTOMER ASSUMES ALL RISKS RESULTING FROM THE USE OF THE DELIVERABLES OR SERVICES PURCHASED, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESS.

11. **Limitation of Liability.** EXCEPT WITH RESPECT TO DAMAGE TO BAILED PARTS AS DESCRIBED IN SECTION 4, CUSTOMER'S EXCLUSIVE REMEDY AGAINST ALD, AND ALD'S SOLE LIABILITY, FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE SHALL BE LIMITED TO EITHER OF THE FOLLOWING, AT ALD'S SOLE DISCRETION: (A) REPERFORMANCE OF THE APPLICABLE SERVICES, OR (B) REFUND OF THE PRICE FOR SUCH SERVICES AT THE PRO RATA CONTRACT RATE. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF OPPORTUNITY, WHETHER SUCH ACTION OR CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTE OR OTHERWISE, INCLUDING WITHOUT LIMITATION CLAIMS REGARDING DAMAGE TO BAILED PARTS. TO THE EXTENT ALLOWED BY LAW, ANY STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THIS PROVISION ARE WAIVED BY CUSTOMER. Any deliverables claimed by Customer to be nonconforming shall not be returned or discarded without ALD's written consent. In no event shall ALD be liable for any loss, damage, cost or expense arising from any act, omission or representation by Customer or any third party.
12. **Claim Limitation Period.** All actions or proceedings brought by Customer in connection with these Terms, whether based on contract, tort or any other legal theory of recovery, must be commenced within the applicable statutory period, but in no event more than one year after the completion of Services.
13. **Force Majeure.** ALD is not 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, slowdowns, accidents, casualties, shortages of supplies from ALD's normal sources, inability to produce or process materials, delays in transportation, however caused, affecting either ALD or ALD's suppliers, or any other cause or causes beyond ALD's control, including governmental statutes, regulations or other administrative action. If, due to any such occurrence, ALD is unable to supply the total demands for any products hereunder.

14. **Storage Fees.** If Customer postpones delivery for more than 30 days, Customer agrees to pay reasonable storage fees.
15. **Assignment.** Customer shall not assign any of its rights or obligations hereunder without the express written consent of ALD. ALD may assign its rights and obligations hereunder without the consent of Customer and ALD also may at any time without the consent of Customer use subcontractors to perform all or any portion of the Services.
16. **Governing Law.** These Terms shall be shall be governed in all respects by the laws of the State of Michigan, excluding the application of its conflicts of laws provisions.
17. **Arbitration.** Any controversy or claim arising out of or relating in any way to the agreement between Customer and ALD, 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 shall be specifically enforceable. Notwithstanding the foregoing, this paragraph 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.
18. **Allocation.** In the event of a shortage of materials, ALD may in its own discretion allocate its available supply among its customers in such a manner as ALD shall deem fair and equitable, or cancel such delayed shipment without further liability other than the refund to Customer of any amounts paid by it to ALD with respect to the shipment so delayed.
19. **Indemnity.** It is expressly understood that any technical advice furnished by ALD with reference to the use of the deliverables is provided free of charge and ALD assumes no obligation or liability for the accuracy of such advice or results obtained, all such advice being given and accepted at Customer’s sole risk. Customer hereby agrees to assume full responsibility and risk for the safe handling and use of the deliverables after shipment by ALD. Customer agrees to indemnify, defend and hold ALD harmless for any and all liability, claims, suits, actions, costs, attorneys’ fees, expenses, damages, judgments or decrees resulting from personal injury (including death) or property damage arising out of the Customer’s possession, resale or any use of the deliverables, breach of any of Customer’s obligations under these Terms, or any negligent act or omission of Customer, except to the extent that such personal injury or property damage is due to the sole negligence of ALD.
20. **No Waiver.** The failure of ALD (with or without intent) to insist upon strict performance by the Customer of any term, provision or condition in these Terms shall not be construed as a further or continuing waiver of any such term, provision or condition or any other term, provision or condition hereof.
21. **Severability.** If any term or condition herein, or the application thereof to any party or circumstance, shall be deemed to be invalid or unenforceable, the remainder of these Terms shall not be affected thereby, and all such terms, covenants or conditions shall be valid and enforceable to the full extent permitted by law.