

CHTAA Standard Conditions of Business

[COMPANY NAME]
Company

and

[CUSTOMER NAME]
Customer

CHTAA Standard Conditions of Business

Date 20

Parties

1.(Company)

2.(Customer)

Agreement

The Company and the Customer agree to be bound by the terms and conditions of this Agreement in all circumstances and in respect of the purchase by the Customer and the supply by the Company of all heat treatment services from the date of this Agreement. Subject to the terms and conditions of this Agreement, the Customer agrees to purchase heat treatment services from the Company, and the Company agrees to supply heat treatment services to the Customer.

Executed as an agreement.

.....
for and on behalf of **[COMPANY]**

.....
for and on behalf of **[CUSTOMER]**

Terms and Conditions

1. Quotations

1.1 Deemed to include conditions of Agreement

All Quotations and Acknowledgements in whatever form (including electronic) given by the Company shall be deemed to include the conditions contained in this Agreement (subject to the provisions of clause 15.3);

1.2 Acceptance

Any Quotation provided by the Company to the Customer forms an offer capable of acceptance by the Customer within three months from the date thereof, but the Agreement shall not come into effect until the Customer has accepted the Quotation and until such time the Company shall be free to withdraw the offer. Where an order is placed by the Customer for Treatment, it shall be deemed to be an offer to purchase heat treatment services subject to this Agreement;

1.3 Amendment

After examination of samples of the Goods or upon receipt of the Goods, the Company has the right to amend the Quotation or decline to accept Goods for Treatment or to cancel this Agreement without liability to the Customer;

1.4 Increase of quoted price

The Company may by giving notice to the Customer at any time up to receipt of the Goods by the Company for Treatment increase any price quoted to reflect any increase in the costs of the Treatment which are due to an increase in the cost of labour, materials, manufacturing and/or transport costs or the imposition, introduction or increase of levies or taxes to which the Company is subject;

1.5 Approximations

Where the Quotation or Acknowledgement contains documents and particulars in whatever form (including electronic) produced by the Company including (without prejudice to the generality of the foregoing) illustrations, designs, drawings, weight and technical specifications and ratings such documents and particulars shall be deemed to be approximate only.

1.6 Information

When accepting the Quotation or Acknowledgement the Customer shall submit to the Company all information specifications drawings and technical descriptions (**Information**) necessary to enable the Company to provide the Treatment and the Customer alone shall be responsible for the accuracy of such Information. The Company reserves the right not to commence the Treatment until it is in receipt of the Information it requires in order to provide the Treatment.

2. Specifications, Descriptions and Illustrations

2.1 Advertising Materials or Brochures

Specifications, descriptions and illustrations contained in the Company's catalogues, brochures or other advertising materials (in whatever form including documents on any

website) are intended to give only a general indication of the services and the possible result of any heat treatment and no such specifications, descriptions or illustrations shall form any part of this Agreement or form any warranty or representation by the Company.

2.2 Changes to Specifications

The Company may change the specification, materials or finishes used in the Treatment to conform to any applicable safety or statutory requirements;

3. Pricing and Payment

3.1 Pricing

Unless otherwise stated, all prices quoted are the price of the Treatment exclusive of GST and do not include packaging or insurance. The Customer shall be responsible for any additional costs arising from part deliveries or express despatch.

3.2 Payment

- (a) The price for each Treatment inclusive of GST (**Price**) shall be paid in full without any deduction by way of set-off, counterclaim or otherwise and received by the Company within 30 days of it rendering an invoice to the Customer or as agreed by the Company and the Customer.
- (b) The Customer will pay to the Company all additional costs charges and expenses which the Company incurs or sustains in respect of or otherwise connected with the variation delay or suspension of the Contract arising from an act or omission of the Customer or any employee agent or contractor of the Customer or by reason of any other circumstances for which the Company is not wholly responsible.
- (c) The Company shall be entitled to apply as it thinks fit any payment received from the Customer to any debt outstanding in respect of any contract between the Company and the Customer notwithstanding any purported appropriation by the Customer to the contrary.

3.3 Default in payment

If the Customer defaults in the payment of any money payable under this Agreement, or any other agreement between the Company and the Customer then the Company may do one or all of the following:

- (a) exercise its rights under clause 4 of this Agreement; and
- (b) charge interest on the amount outstanding at the Prescribed Rate, calculated from and including the date on which the payment became due until but excluding the date on which the payment is made, which interest is payable on the Company making written demand; and
- (c) terminate the Agreement pursuant to clause 14.

4. Lien

The Company shall have a general lien on all goods and property belonging to the Customer and such lien shall be exercisable in respect of all sums lawfully due from the Customer to the Company. The Company shall be entitled on the expiration of fourteen days' notice to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards such debt.

5. Transportation

- (a) Unless otherwise stated in the Quotation or Acknowledgement the Customer shall deliver the Goods to the Premises on the date and time notified by the Company to the Customer and will be solely responsible for the costs and risks thereof.
- (b) If the Quotation or Acknowledgment includes transportation of the Goods to and from the Premises, then the Company will arrange transport by whatever method it considers appropriate (including the use of a third party carrier if it so wishes).
- (c) The Customer shall be responsible for the suitable packing of the Goods having regard to their weight, manufacturing tolerances, quality and value to the Customer in materials which can be reused where appropriate by the Company for delivery of Treated Goods. Where such materials are not reusable or in the opinion of the Company deemed inadequate for packing Treated Goods the Company will pack Treated Goods as it deems appropriate and any additional costs so incurred shall be charged to the Customer. The Company does not accept responsibility for the return of packing materials after the Treatment.

6. Risk

- (a) Unless the Agreement expressly states the contrary, risk of damage or loss to Goods and the Treated Goods shall at all times (including whilst they are at the Premises and during transportation to and from the Premises) remain at the Customer's entire risk who shall be responsible and affecting and maintaining to its own insurance cover in respect thereto. Without prejudice to the generality of the foregoing, the Customer shall insure the Goods and Treated Goods in transit irrespective of the means of transportation used.
- (b) The Customer is responsible in all cases for unloading the delivery vehicle and shall be responsible for all loss of or damage to the Treated Goods during the course of unloading.

7. Delivery

- (a) Delivery of the Treated Goods shall be made by the Customer collecting the Treated Goods at the Premises or, if some other place for delivery is agreed by the Company, by the Company dispatching the Treated Goods to that place.
- (b) Any delivery dates given in the Quotation, Acknowledgment or otherwise by the Company shall be estimates only and shall not constitute essential terms of the Agreement. Any delay in completing the Treatment shall not constitute a breach of contract entitling the Customer to terminate.
- (c) The Customer shall, unless the Company is to arrange delivery of the Goods to the Customer's premises, collect the Treated Goods from the Premises within 10 Business Days of the Company notifying the Customer that the Treated Goods are available for collection.
- (d) Where the Treated Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer

in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

- (e) If the Customer fails to take delivery of the Treated Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company, the Company may:
- (i) store the Treated Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - (ii) sell the Treated Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Agreement or charge the Customer for any shortfall below the price under the Agreement; and/or
 - (iii) terminate the Agreement pursuant to clause 14.

8. Storage

The Company may store all or any part of the Treated Goods at locations other than the Premises.

9. Sub-Contracting

The Company reserves the right to sub-contract the fulfilment of the Agreement or any part thereof in which event the Company contracts on behalf of itself and its sub-contractors.

10. Liability

10.1 Limitation of liability

Subject to this clause 10, the Company is not liable to the Customer or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Customer or any of its officers, employees, agents or contractors; or
- (b) any indirect, incidental, special or consequential damage, including loss of profits or anticipated profits whether caused by or in relation to breach of contract, statute, tort (including negligence) or otherwise, even if notified of the possibility of that potential loss or damage.

10.2 Exclusion of implied warranties

Any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by Law.

10.3 Non-excludable rights implied by Law

Nothing in the Contract shall be read or applied so as to exclude, restrict or modify or have the effect of modifying any condition, warranty, guarantee, right or remedy implied by law including but not limited to the *Trade Practices Act 1974* (Cth) and which by law cannot be excluded, restricted or modified. To the extent that any of these terms and conditions are in breach of any law, which is not capable of exclusion from the Agreement, then that clause

shall to the extent of any inconsistency with the law, be read down to comply with the law and if required severed from the Contract.

10.4 Liability for breach of non-excludable rights

- (a) To the fullest extent permitted by Law, the liability of the Company for a breach of a non-excludable condition or warranty referred to in clause 10.3 is limited, at the Company's option, to:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

10.5 No liability for inherent risks of Treatment

The Customer acknowledges and accepts that Treatment carries inherent risks to the Goods including, but not limited to, cracking, distortion, failure to respond, segregation, grain growth, melting and variation in surface finish dependent upon such factors as material composition, hardenability, sizes and sections and manufacturing history including prior heat treatment. The Customer accepts that the Company is not liable in any way to the Customer or to any other person for any loss or damage of any kind that is directly or indirectly caused by or result from the Treatment process and the Customer enters into this Agreement on that basis.

10.6 Responsibilities of Customer

The Customer shall be responsible for ensuring that the Goods are suitable for Treatment. If prior to or at any time during Treatment the Company forms the opinion in its absolute discretion that the Goods are unsuitable for Treatment or for the continuation of Treatment (as the case may be) the Company shall be entitled to discontinue Treatment forthwith and will notify the Customer as soon as reasonably practicable. The Company will invoice the Customer for costs incurred and Treatment actually carried out and Clause 3 shall apply to payment as if Treatment had been completed.

10.7 Excluded Losses

The weight or quantity of the Treated Goods printed on the Company's tax invoice/delivery docket or on any other advice to the Customer shall be final unless the Customer gives written notice of any discrepancy in weight or quantity to the Company within seven days after taking delivery of the Treated Goods. If the Company receives notice of a discrepancy in weight or quantity from the Customer, the Customer must then give the Company a reasonable opportunity to inspect the Treated Goods in order to verify the loss before the Treated Goods are used, processed or sold by the Customer.

The Customer at all times acknowledges and accepts that there shall be excluded losses of 3% of the original weight or quantity of the Goods as a result of the Treatment (being the industry norm for losses during Treatment).

11. Indemnity

The Customer shall indemnify and keep the Company indemnified from and against any liability of any kind to any third party howsoever arising in respect of or in connection with:

- (a) any defect in the Goods; and/or

- (b) any inadequate or inaccurate instructions information specifications drawings or technical descriptions given by the Customer its employees or agents relating to the Treatment of the Goods; and/or
- (c) any defect in the Customer's title to the Goods or authority to contract with the Company for Treatment of the Goods; and/or
- (d) any loss injury or damage of any kind (whether direct indirect or otherwise and including but not limited to any loss of profit and/or any incidental consequential or special loss or damage of any description) arising out of in respect of or in connection with the supply of the Treated Goods or their use or resale; and/or
- (e) any losses claims demands or damages incurred by the Company exceeding the Company's liability pursuant to this Agreement.

The Customer shall indemnify the Company against all losses damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent copyright design trade-mark or other industrial or intellectual property rights of any person which results from the Company's use of the Customer's design drawing specification tooling or goods (including but not limited to the Goods).

12. Force Majeure

The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Company's reasonable control:

- (i) acts of God explosion flood tempest fire or accident;
- (ii) war or threat of war sabotage insurrection terrorism civil disturbance or requisition;
- (iii) acts restrictions regulations by-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
- (iv) import or export regulations or embargoes;
- (v) strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- (vi) difficulties in obtaining raw materials labour fuel parts or machinery;
- (vii) power failure or breakdown in machinery.

13. Cancellation

Cancellation of this Agreement by the Customer will be a breach of contract entitling the Company to compensation and the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses paid incurred or sustained by the Company as a result of the cancellation.

14. Termination

14.1 General Rights of Termination

Without prejudice to any other right or remedy it may have, whether under the Agreement, under statute or otherwise, the Company may terminate the Agreement by written notice to the other party if:

- (a) any sum which is due and payable by the Customer to the Company whether under the Contract or otherwise remains unpaid for a period of 10 Business Days; or
- (b) the Customer fails to take delivery of any goods under any contract between the Customer and the Company otherwise than in accordance with the Customer's contractual rights; or
- (c) the Customer fails to supply the Company with instructions for despatch of the Treated Goods at the time stated for delivery; or
- (d) unforeseen events including (without prejudice to the generality thereof) those referred to in Clause 12 materially affect the commercial effect of the Agreement; or
- (e) if the Company receives notice of any claim alleging that the Goods or any part thereof or any Treatment applied to the Goods infringe any patent copyright design right trade mark or other industrial or intellectual property rights of any other person; or
- (f) the Customer fails to provide any letter of credit, bill of exchange or other security required by the Agreement; or
- (g) an Insolvency Event occurs in respect of the Customer; or
- (h) the Company reasonably apprehends that any of the events mentioned in paragraphs (a) to (g) is about to occur in relation to the Customer and notifies the Customer accordingly.

14.2 Survival

Termination of the Agreement will not effect clauses 3, 7, 10 and 15 or any other provision of the Agreement which is intended to continue after termination and will also be without prejudice to any claim by either party against the party arising out of any breach of non-performance by the party of any obligations assumed or imposed on that party under the Agreement at any time prior to termination.

15. General

15.1 Governing Law and Jurisdiction

The Agreement is governed by, and must be construed in accordance with, the laws of the State of [INSERT STATE] The parties submit to the non-exclusive jurisdiction of the courts

of that State and the Commonwealth of Australia in respect of all matters or things arising out of the Agreement.

15.2 Variation

The Agreement cannot be amended or varied except in writing signed by the Company and the Customer.

15.3 Entire Agreement

The Agreement contains the entire understanding between the Company and the Customer concerning the subject matter of the Agreement and supersedes all prior communications between the Company and the Customer. The Customer acknowledges that, except as expressly stated in the Agreement, the Customer has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the Company in relation to the subject matter of the Agreement.

15.4 Notice

Notices to be served under this Agreement shall be in writing and delivered by hand or sent by post, e-mail or fax to either party at its last known place of business. Notice is deemed to be given by the sender and received by the addressee:

- (a) if delivered in person, when delivered to the addressee;
- (b) if posted, 2 Business Days (or 6 Business Days, if addressed or posted outside Australia) after the date of posting to the addressee whether delivered or not;
- (c) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee; or
- (d) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee),

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

15.5 Time of the Essence

For all periods and times specified in clause 3, time is of the essence.

15.6 No Waiver

A failure, delay, relaxation or indulgence by the Company in exercising any power or right conferred on the Company by the Agreement does not operate as a waiver of the power or right.

A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under the Agreement. A waiver of a breach does not operate as a waiver of any other breach.

15.7 No Assignment

The Customer cannot assign or otherwise transfer the benefit of the Agreement without the prior written consent of the Company.

15.8 Nature of Obligations

Any provision in the Agreement which binds more than one person binds all of those persons jointly and each of them individually. Each obligation imposed on a party by the Agreement in favour of another is a separate obligation.

15.9 Execution Binding

The Agreement binds each party signing it even though:

- (a) one or more of the named parties does not execute the Agreement;
- (b) there is an irregularity in execution or a forgery or invalidity in relation to execution;
or
- (c) the Agreement is unenforceable, void or voidable against any named party.

16. Definitions and Interpretation

16.1 Definitions

In these terms and conditions, unless the context requires otherwise:

Acknowledgement means the written acknowledgement of an order given by the Company to the Customer;

Association means the Contract Heat Treaters Association of Australia;

Business Day means a day which is not a Saturday, Sunday, a public holiday (for the whole day) or a bank holiday (for the whole day) in the State of Victoria;

Company means [NAME OF COMPANY], a member of the Association;

Customer means the person, firm, company or legal entity with whom this Agreement is made;

Agreement means the agreement between the parties for the Treatment of the Goods on these terms and conditions;

Goods means the Customer's goods described in the Quotation, Acknowledgement or subsequently supplied by the Customer to the Company for Treatment;

GST means the tax imposed by the *A New Tax System (Goods and Services Tax) 1999* (Cth) and the related imposition Acts of the Commonwealth;

Insolvency Event means in respect of a party:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or another similar official, is appointed in respect of that party or any of its property, or any security is enforced over any substantial part of its assets;

- (b) the party ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally;
- (c) the party is, becomes, or is deemed to be insolvent or bankrupt;
- (d) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 days;
- (e) anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction; or
- (f) in the event that that party is an individual, anything having a similar effect to any of the events specified above happens in respect of that individual;

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth, the relevant State or Territory or a relevant Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth, the relevant State or Territory or a relevant Government Agency that have the force of law;

Premises means the Company's premises or place of business as shall be specified on the Quotation or Acknowledgment;

Prescribed Rate means the rate [INSERT DETAILS OF APPLICABLE RATE];

Quotation means the written or oral quotation given by the Company to the Customer;

Treatment means the heat treatment (or other treatment) services described in the Quotation or subsequently provided by the Company to the Customer; and

Treated Goods means the Goods after Treatment.

16.2 Interpretation

In these terms and conditions, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of these terms and conditions;
- (d) a reference to a document includes the document as modified from time to time and any document replacing it;
- (e) if something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;

- (f) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (g) the word "month" means calendar month and the word "year" means 12 months;
- (h) the words "in writing" include any communication sent by letter, facsimile transmission or email;
- (i) a reference to any statute, proclamation, rule, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, regulation or ordinance replacing it. A reference to a specified section, clause, paragraph, schedule or item of any statute, proclamation, rule, regulation or ordinance means a reference to the equivalent section of the statute, proclamation, rule, regulation or ordinance which is for the time being in force;
- (j) wherever "include" or any form of that word is used it must be construed as if it were followed by "(without being limited to)";
- (k) money amounts are stated in Australian currency unless otherwise specified; and
- (l) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has its powers or functions removed ("defunct body"), means the agency or body which performs most closely the functions of the defunct body.