



WORLDWIDE LEADERS IN AUSTEMPERING HEAT TREATMENT TECHNOLOGY

Standard Terms and Conditions of Sale

Rev. 2018-1

- Definitions.** "Services" means the heat treat services provided by Applied Process, Inc., including any of its affiliated companies (collectively, "AP"), to the customer ordering or requesting such Services ("Customer"). "Components" means any products of Customer upon which AP has performed or will perform the Services in accordance with the terms of an Order. An "Order" means any oral or written request, release or order for Services, including any formal Purchase Order issued by Customer.
- Application of Terms and Conditions.** Unless superseded by mutually agreed terms and conditions signed and/or initialed by AP and Customer, by requesting that AP provide the Services on the Components, the customer hereby agrees that these Terms and Conditions shall apply notwithstanding any contrary provisions contained in any document delivered by Customer to AP (previously or hereafter), including, without limitation, any request for quotation, purchase order(s), shipping document, or acknowledgment form provided by Customer or any of its agents and even if such documents contain language mandating that the provisions contained in such documents override or invalidate any contrary provisions contained in herein.
- Packing; Shipping; Delivery of Components.** Customer shall be solely responsible for the adequate packing of Components in order to protect them in transit to AP against adverse weather conditions, impact damage, and/or any other transportation risks. Customer shall use packing materials suitable for re-use by AP where AP is responsible for delivering the Components to Customer, unless, in writing, Customer and an authorized AP representative have agreed upon other methods for Components packaging. No warranty whatsoever is given by AP that packing materials, cases, cartons and pallets will be returned to Customer. Wherever possible, however, these will be returned to Customer with the Components. AP does not accept any liability for damage as a result of unsuitable packaging. Delivery of Components is contingent on AP receiving with the Order complete and detailed current specifications (including any prints or drawings) satisfactory for production with sufficient lead time for AP to perform the Order. Unless AP has quoted delivery, pick-up and trucking, all Components are shipped F.O.B. AP's location. Risk of loss of any Components in transit shall pass upon delivery to the F.O.B. point. The party undertaking risk of loss is solely responsible for all shipping and delivery charges and shall maintain adequate insurance with reputable carriers covering the replacement value of such Components in transit.
- Inspection.** Customer will inspect all Components processed by AP promptly upon receipt thereof and will notify AP of any objections to the Components or the Services within five (5) business days after receipt. If Customer does not so object or refuses the opportunity to inspect the Components, Customer will be deemed to have accepted the Components and the Services as conforming to specification and otherwise meeting its requirements. A sample of each order of Components are tested before leaving AP's premises. Any further investigation is done only because of specific written instruction and may be at extra cost. This final clearance at AP's premises does not release Customer from its inspection duties.
- Warranty, Limited Liability, Indemnity.** Given the uncertainties inherent in the heat treat process, Customer acknowledges and accepts that AP's liability under any Order shall be as provided for in the AP Statement of Limited Liability, incorporated by reference herein and which adopts the Metal Treating Institute's standards (the "Statement"). A copy of the Statement is available on AP's website (www.appliedprocess.com). If AP prevails in any legal action brought by or on behalf of Customer against AP, Customer shall pay all fees, expenses and costs of AP incurred as a result of such legal action, including its legal, professional, court and other fees and expenses. Customer will defend, indemnify and hold AP harmless from any and all third-party claims brought against AP relating in any way to the manufacturing, sale, processing, distribution or use of the Components or the provision of the Services if the Components have been subjected to further processing, assembly or work following performance of the Services by AP which affects the heat treat properties of the subject material unless liability is proven to be caused by AP's failure to perform in accordance with the warranties made by AP to Customer.
- Raw Material Supplier.** Customer agrees to notify AP promptly regarding any changes in the supplier of raw materials involving the parts to be heat treated. Notification must, at a minimum, include chemical/material certifications and the date when said changes will become effective. Failure to do so before the completion of any heat treat work on material from a new supplier will release AP from any and all liability.
- Intellectual Property.** Customer warrants that parts to be treated by AP shall not infringe or contribute to the infringement of any patent, registered industrial design or copyright issued in any jurisdiction. Customer agrees to defend, hold harmless and indemnify AP its successors and assigns against all claims, demands, losses, suits, damages, liability and expenses including reasonable attorney fees arising out of any such claim or action for actual or alleged, direct or contributory infringement of or inducement to infringe any United States or foreign patent, trademark and copyright by reason of services rendered by AP on Customer's parts or for actual or alleged misuse or misrepresentation of a trade secret resulting directly or indirectly from AP's services rendered on Customer's parts.

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8. Ownership of the Confidential Information. Each party recognizes and agrees that all right, title and interest in the Disclosing Party's Confidential Information (including all tangible forms thereof and intangible rights therein) shall remain at all times with the Disclosing Party and that nothing in this Agreement shall be construed to grant the Recipient Party any right, title, interest or license in any technology, patents, patent applications, trade secrets, copyrights, know-how, trademarks or Confidential Information owned or controlled by the Disclosing Party. Neither party shall alter or obliterate any notice of any propriety right of the other party on any copy of the other party's Confidential Information.
9. Changes; Cancellations. No order that has been accepted by AP may be changed or cancelled by Customer (in whole or in part) unless AP agrees to such change or cancellation in writing or such cancellation is due to breach by AP. Changes may result in a delay in the scheduled delivery date and a change in price. Any change in price or delivery will be as agreed to by Customer and AP. Upon any cancellation (in whole or in part) including any cancellation for breach, Customer will pay all costs and expenses (including overhead and administrative expenses) incurred by AP on the Order up to the effective date of cancellation.
10. Pricing; Payment. Prices are as quoted by AP and are subject to change upon notice to Customer. Invoices are payable in US dollars on a "Net 30 day" basis unless otherwise agreed to in writing. AP reserves the right, without any liability whatsoever to Customer or any other person or entity, to suspend performance, refuse to accept additional releases or orders, stop delivery of Components in transit, decline to deliver except for cash, require payment prior to shipment, and/or restrict or modify payment terms whenever Customer's account is delinquent or AP has reason to doubt Customer's solvency, financial condition or ability to pay.
11. Force Majeure. AP will not be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including without limitation, acts of God, fire, flood, inability to obtain material at reasonable prices, equipment or transportation, governmental laws or regulation, accidents, labor disputes or shortages, or other similar matters. In the event of a force majeure event, AP will notify Customer and will attempt to minimize the duration of any impact on its ability to perform under an Order due to such force majeure event.
12. Governing Law; Venue. This contract has been made in and will be construed and enforced in accordance with the laws of the State of Michigan without regard to its principles of conflicts of laws. Customer and AP consent to the exclusive jurisdiction of the state and federal courts of Michigan for any actions, suits or other proceedings arising out of, or related to, the enforcement of either party's rights hereunder. AP and Customer agree not to commence any action suit or proceeding in any other court and hereby irrevocably and unconditionally waive any objection to the laying of venue in any such court. The Uniform Commercial Code and the UN Convention on Contracts for the International Sale of Goods expressly do not apply to any Order, Offer to Sell or any Services sold hereunder.
13. Entire Agreement, Acceptance, Modification. Unless otherwise agreed to in writing by AP, the terms and conditions contained herein and on any of AP's standard forms constitute AP's entire offer to sell the Services to Customer ("Offer to Sell"), constitute the entire agreement between AP and the Customer with respect to the subject matter thereof, and supersede all prior or contemporaneous communications and agreements. These Terms and Conditions shall apply to all orders and releases received from Customer. Customer's acceptance of AP's Offer to Sell and AP's performance of the Order (in whole or in part) are expressly limited to, and conditioned upon, Customer's acceptance of these Terms and Conditions, which may not be changed or waived except in a writing signed by both parties. Without limitation on the foregoing, AP's performance on an Order shall not be considered acceptance of any counter-offer or terms provided by Customer and AP will not be bound by, hereby objects to, and rejects, any additional provision or any provision at variance with these Terms and Conditions or any other part of AP's Offer to Sell that may appear in Customer's purchase order, standard terms and conditions, acknowledgments, form agreements, supplier or quality manuals, notices or in any other document or communication from Customer to AP, or any updates or amendments thereto. These Terms and Conditions may only be modified by a writing signed by the CEO or CFO of AP.
14. Survival. The provisions of Sections 7 and 8 will survive the expiration or termination of these Terms and Conditions.
15. Severability. In case any one or more of the provisions or parts of a provision contained herein are, for any reason, held to be invalid, illegal or, such invalidity, illegality or unenforceability will not affect any other provision or part of a provision hereof, but these Terms and Conditions will be reformed and construed as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part will be reformed so that it would be valid, legal and enforceable to the maximum extent permitted while retaining as much as possible the original intent of the provision.
16. Independent Contractors. Customer and AP are independent contracting parties and nothing in the Order or AP's Offer to Sell will make either party the employee, partner, joint venturer, agent or legal representative of the other for any purpose. Neither the Order, nor the Offer to Sell, grants either party any authority to assume or to create any obligation on behalf of or in the name of the other. Each party understands that the other manufactures products or provides services for sale to a wide variety of customers and that nothing in these Terms and Conditions precludes either party from selling its products to customers or competitors of the other.

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