

**Heat Treatment Australia**  
**TERMS AND CONDITIONS**

**1. General**

- 1.1 In these Terms and Conditions, unless the context otherwise requires:
- "**Buyer**" means any person firm or corporation who or which has requested Work from Heat Treatment, and includes employees, agents, successors, administrators, and permitted assigns of the Buyer.
- "**Contract**" means any agreement for Work by Heat Treatment for a Buyer.
- "**Current Price**" means the price charged by Heat Treatment as at the date of delivery in respect of work of the relevant description.
- "**Goods**" means any item owned by the Buyer which Heat Treatment treats or performs Work on or in respect of at the request of the Buyer as described in the written quotation or on the delivery slip.
- "**Heat Treatment**" means Heat Treatment (Qld) Pty Ltd (ABN 53 088 212 686) trading as Heat Treatment Australia, and includes its agents, employees, successors and assigns.
- "**Terms and Conditions**" means these terms and conditions.
- "**Work**" means modification, testing, treatments or services supplied by Heat Treatment to a Buyer in relation to Goods as described in the written quotation or on the delivery slip.
- 1.2 All Work performed by Heat Treatment is performed on these Terms and Conditions as amended from time to time by Heat Treatment as its discretion. Heat Treatment will notify the Buyer in writing of all amendments to these Terms and Conditions.
- 1.3 These Terms and Conditions take precedence over and exclude the operation of any other inconsistent provisions, including all provisions contained in any document sent to Heat Treatment by the Buyer, whether before or after the making of the contract. Acceptance of delivery of Goods or any payment in respect of Work constitutes an unqualified acceptance of the Work performed on these Terms and Conditions.
- 1.4 Where any special conditions relating to the performance of specific Work are inconsistent with the general Terms and Conditions, then the special conditions prevail over the general Terms and Conditions to the extent of the inconsistency.

**2. Orders**

- 2.1 A Contract is created upon acceptance by Heat Treatment of a written order from the Buyer for performance of Work. Acceptance is by written notice of acceptance, or delivery of Goods to the Buyer.
- 2.2 Heat Treatment may refuse to perform Work (whether or not part of a Contract has been performed) where:
- (a) Work is unable to be performed for any reason;
  - (b) no order, or an order which does not comply with clause 2.3, is received;
  - (c) an order is received pursuant to a quotation after the date specified in the quotation as its expiry date, or if none, 7 days from the date of the quotation; or
  - (d) the Buyer or any related corporation has committed an Event of Default (as defined in clause 9.1) in relation to any Contract with Heat Treatment.
- 2.3 An order for the performance of Work must:
- (a) identify the Work to be performed, the Goods that the Work is to be performed on, and any quotation pursuant to which the order is made;
  - (b) be subject to these Terms and Conditions and any additional terms and conditions as Heat Treatment may require;
  - (c) specify the preferred date of delivery; and
  - (d) specify if the Goods will be installed in or on an aircraft or other aerial device.
- 2.4 Any variation of a Contract, or cancellation of an order must be agreed to in writing by Heat Treatment.
- 2.5 Quotations given are estimates only and subject to withdrawal or alteration at any time. Heat Treatment reserves the right to accept or reject any order notwithstanding any quotation that may have been given.

**3. Price**

- 3.1 The price for the Work is the sum of:
- (a) the price for the Work as quoted by Heat Treatment or if no quote has been made, the Current Price for the Work at the time of delivery;
  - (b) the price of any additional Work requested or accepted by the Buyer;
  - (c) any taxes and statutory charges in relation to the Work;
  - (d) any storage and delivery charges in relation to the Goods;
  - (e) the cost of any variation to the Contract which has been agreed to by Heat Treatment;
  - (f) any increases in material, labour, freight or cartage costs occurring after the date of the quotation, or if the order is not pursuant to a quotation, the date the Current Price at the time of delivery was issued.
- 3.2 Any prices quoted do not include sales tax unless specified.
- 3.3 All prices for Work in any brochures, letters, price lists or other documents of Heat Treatment or provided by Heat Treatment are subject to change without notice.
- 3.4 Heat Treatment reserves the right to charge for Work at the Current Price.

3.5 Heat Treatment reserves the right to correct miscalculations or errors in quotations or contracts which are obvious on their face

#### **4. Payment**

4.1 Payment is made when cash is received, or if payment is by cheque, when the cheque is cleared into the bank account of Heat Treatment.

4.2 Subject to clause 4.3, all Work must be paid for in cash at Heat Treatment's place of business before delivery, irrespective of whether delivery is part of or all of a Contract.

4.3 Heat Treatment may in its discretion agree to perform Work on credit to the Buyer. In this case:-

- (a) payment for Work and other amounts payable to Heat Treatment is to be made within 30 days of the date of the invoice showing those amounts as owing;
- (b) amounts owing by the Buyer to Heat Treatment at any time must not exceed a limit to be determined by Heat Treatment from time to time and advised to the Buyer in writing. Heat Treatment may revise the credit limit at any time for any reason;
- (c) interest is payable on overdue amounts at the rate of 2% over the National Australia Bank Indicator Lending Rate for advances under \$100,000.00, calculated daily and payable with the overdue amount. Any payments received from the Buyer will be applied first to accrued interest;
- (d) Heat Treatment may at any time by written notice (except where an Event of Default is committed, when no notice is required) withdraw or vary credit terms;
- (e) the Buyer named in an application for credit to Heat Treatment is and remains liable for all amounts owing to Heat Treatment in relation to any Work performed on the basis of that application, notwithstanding any change in ownership or structure of the Buyer, and until such time as a fresh application for credit in the name of the Buyer as changed is completed and approved by Heat Treatment; and
- (f) the Buyer agrees to keep Heat Treatment fully notified of all changes in name, address, structure and ownership.

4.4 Where the Work performed forms part only of a Contract, and the price of the Work is determined in relation to the whole Contract, payment in relation to that Work performed is as determined by Heat Treatment, but reflects the Contract value of that particular Work.

4.5 Where the Buyer requests delivery or where delivery is agreed at a date more than 30 days from receipt of an order, Heat Treatment may make progress claims at the end of each calendar month. The amount of each progress claim will be the value of Work performed during that calendar month, calculated by Heat Treatment as a fraction of the total price. The determination of Heat Treatment will be final and binding.

4.6 The Buyer must not deduct any sum from the amount due on any invoice or statement for any reason whatsoever.

4.7 Heat Treatment is entitled to payment notwithstanding any difficulties of the Buyer in procuring effective delivery of the Goods.

#### **5. Delivery**

5.1 Delivery will take place at Heat Treatment's premises within normal business hours unless otherwise agreed. Heat Treatment will notify the Buyer when Goods are available for collection. If Goods are not collected within 5 working days of notification of availability, Heat Treatment may charge the Buyer storage costs in relation to the Goods.

5.2 If agreed by Heat Treatment the Goods will be delivered to an address to be specified by the Buyer at least 2 working days prior to Heat Treatment's anticipated delivery date. In such case:-

- (a) the Buyer must pay all charges associated with delivery;
- (b) delivery is by vehicle on a properly constructed roadway alongside the delivery address or as close to the delivery address as conditions allow;
- (c) Heat Treatment's responsibility for delivery ceases at the kerb side of the delivery address, and in particular Heat Treatment is not in any way responsible in relation to any delivery across land; and
- (d) the Buyer must be present at the agreed place and time for delivery. If the Buyer is not present Heat Treatment may unload the Goods at that place, in which case Heat Treatment will not be responsible for any claims, costs or losses arising therefrom.

5.3 If clause 5.2 applies, delivery occurs upon the arrival of the Goods at the agreed delivery address and if more than one attempt at delivery is made, upon arrival the first time. Otherwise, delivery occurs upon the earlier of either the actual collection of Goods or 5 working days after the provision of notice of availability to the Buyer by Heat Treatment.

5.4 A quantity, description, date, time and place of delivery of Goods as indicated on Heat Treatment's invoice or delivery docket or copies thereof is conclusive evidence of the quantity, description, date, time and place of delivery of Goods.

5.5 In the event that a delivery date is nominated by the Buyer, Heat Treatment will take reasonable steps to achieve delivery on or about that date. However, no promise is given that the Work will be performed by that date, despite any term to that effect in the Contract, and Heat Treatment is not liable for any loss (including consequential loss) for failure or delay in delivery. In no case is Heat Treatment liable for any amount payable by the Buyer to a third party as a result of a failure or delay in delivery by Heat Treatment due to any cause.

#### **6. Inspection**

- 6.1 The Buyer must inspect the Goods immediately upon delivery, and carry out any tests in relation to the Goods or the Work that a prudent purchaser would carry out.
- 6.2 The Buyer must give written notice to Heat Treatment of any alleged deficiency or irregularity in the Work or any faults or defects within 3 working days of delivery.
- 6.3 If no notice is given by the Buyer to Heat Treatment under clause 6.2, the Buyer is deemed to have accepted that the Work:-
- (a) is performed strictly in accordance with the Contract;
  - (b) is not faulty; and
  - (c) complies with all relevant specifications and standards,
- and the Buyer loses any right (or alleged right) to reject the Goods or claim any remedy whatsoever (including damages) against Heat Treatment in relation to any of the above, and the Buyer indemnifies Heat Treatment against any claim made by any person arising out of Goods accepted under this clause, whether or not such Goods are damaged or defective, or the Work is deficient or irregular.

## **7. Property and Risk**

- 7.1 Goods accepted by Heat Treatment for the performance of Work are at the risk of the Buyer at all times. The Buyer must insure the Goods against loss or damage of any nature or cause for the time that the Goods are at the Buyer's risk.
- 7.2 The Buyer is not insured under any policy of insurance held by Heat Treatment and accordingly cannot claim as insured.
- 7.3 Heat Treatment is entitled to retain possession of the Goods until the full price of Work performed and all other indebtedness of the Buyer to Heat Treatment is paid to Heat Treatment by the Buyer. In default of payment in accordance with these Terms and Conditions, Heat Treatment may sell the Goods and appropriate the sale price or any portion thereof towards payment of the price. The Buyer charges all of its right, title and interest in the Goods in favour of Heat Treatment for payment of the full price of Work performed.

## **8. Warranties and Exclusions**

- 8.1 Heat Treatment warrants that the Work is performed in accordance with the applicable Australian Standards. If the relevant Standard is prescriptive only, the Work will be performed, at the least, within the broadest tolerance criteria of that Standard which is commercially accepted in the industry to which Heat Treatment belongs. The Buyer acknowledges that in performing Work, Heat Treatment is relying upon information provided by the Buyer, and this clause is to be construed accordingly.
- 8.2 The Buyer will fully inform Heat Treatment of all of the requirements of all third parties (including Commonwealth, State and local governments and relevant statutory bodies or authorities) ("third party requirements") with respect to the Work, whether those requirements arose before or after the making of the contract. Where those requirements are not communicated fully to Heat Treatment, Heat Treatment will not be liable to the Buyer if the Work does not conform to those requirements, and the Buyer will indemnify Heat Treatment against all claims made against it by any other person due to non-conformance with third party requirements. Heat Treatment is not required to make any independent enquiry to inform itself of any third party requirement.
- 8.3 Heat Treatment shall not be liable to the Buyer for any loss of production, interest, revenues, profits, business, contracts, anticipated profits, goodwill or business opportunities or for any other indirect, economic or consequential loss even if the loss or damage was reasonably foreseeable or the Buyer has been advised of the possibility that such loss or damage can occur.
- 8.4 Save as stated elsewhere in these Terms and Conditions and to the maximum extent permissible by law all conditions and warranties which are to be implied by statute or otherwise by general law into these Terms and Conditions or relating to the Buyer are hereby excluded.
- 8.5 The Buyer acknowledges that:
- (a) Heat Treatment makes no representation as to the quality, fitness for use, suitability or merchantability of Goods or Work for any purpose;
  - (b) any advice, information or service provided by Heat Treatment has been given in good faith and without any responsibility whatsoever on the part of Heat Treatment; and
  - (c) in the choice of Work and the assessment of the suitability of Goods or Work for the purpose required the Buyer, has relied entirely upon its own knowledge, skill and judgment and has not relied upon the skill and judgment of Heat Treatment.
- 8.6 The Buyer specifically releases Heat Treatment from and indemnifies Heat Treatment against all claims, demands, actions or proceedings ("Actions") against Heat Treatment for any personal injury or damage to property caused by or arising out of Goods upon which Work has been carried out intended specifically for, and installed in or on, an aircraft or other aerial device, or caused by or arising out of Goods (upon which Work has been carried out) which the Buyer knew would be so installed, where those Goods are essential to the operation or navigation of an aircraft or other aerial device.
- 8.7 Heat Treatment is not liable for any damage to the Goods where that damage is caused by a defect in the Goods. The Buyer acknowledges that in the absence of compelling proof to the contrary, any defects in the Goods are inherent defects in the Goods as supplied to Heat Treatment and of which Heat Treatment has no prior notice.

- 8.8 To the extent permitted by law any liability of Heat Treatment to the Buyer with respect to Work is limited (at Heat Treatment's option) to:
- (a) rectification of the Work; or
  - (b) payment of the costs of having equivalent Work performed.
- 8.9 If, despite clause 8.8, Heat Treatment is liable to the Buyer in relation to the Work or these Terms and Conditions, Heat Treatment's liability is limited to an amount equal to two hundred (200%) of the fees paid by the Buyer for the Work, irrespective of whether the Buyer's claim is based on breach of contract, negligence or otherwise.
- 8.10 A Buyer is not entitled to make any claim upon Heat Treatment if any amounts are outstanding from the Buyer to Heat Treatment.
- 8.11 The Buyer acknowledges that it has read and understood all material issued to it by Heat Treatment in relation to the Work and agrees to comply strictly with the procedures and requirements set out in such material. The Buyer acknowledges that Heat Treatment is not liable for a failure of the Buyer to comply with this clause and indemnifies Heat Treatment against any liability Heat Treatment incurs as a result of the Buyer's failure to comply.
- 8.12 The parties acknowledge that these limitations and exclusions of liability are reasonable in the context of the relationship taken as a whole.

## 9. Default

- 9.1 In the event that the Buyer or a company related to the Buyer:-
- (a) fails to pay Heat Treatment for Work in strict accordance with the terms of a Contract, or the terms of any credit accommodation;
  - (b) is otherwise in default of performance of its obligations under a Contract;
  - (c) threatens to become or is in danger of becoming subject to any insolvency administration; or
  - (d) ceases or threatens to cease to conduct its business in the normal manner,
- then an Event of Default has occurred.
- 9.2 Where an Event of Default has occurred then:-
- (a) the full price of all Work performed for the Buyer by Heat Treatment, and all other amounts payable by the Buyer to Heat Treatment are immediately due and owing to Heat Treatment and payable upon demand;
  - (b) any moneys held by Heat Treatment to the credit of the Buyer are forfeited to Heat Treatment;
  - (c) Heat Treatment may suspend all further performance of any or all of its obligations under any Contract with the Buyer or a related corporation of the Buyer until the default is rectified; and
  - (d) Heat Treatment may treat the event of default as a repudiation of any Contract by the Buyer, and terminate any such Contract.
- 9.3 The Buyer must pay all expenses incurred by Heat Treatment in collecting overdue moneys or otherwise enforcing a Contract on a full indemnity basis.
- 9.4 Interest is payable on all amounts due and payable to Heat Treatment for whatever reason at a rate of 2% over the National Australia Bank Indicator Lending Rate for advances under \$100,000.00 per annum calculated daily and payable with the overdue amount.

## 10. General

- 10.1 The Buyer expressly acknowledges and agrees that Heat Treatment may at any time appoint an agent to perform any obligation of Heat Treatment under a Contract including the delivery of Goods.
- 10.2 Nothing in these Terms and Conditions operates to exclude or attempt to exclude liability, the exclusion or attempted exclusion of which is prohibited or made void by law, and these Terms and Conditions must be construed accordingly. In particular, a clause made void by a provision of the *Trade Practices Act* in relation to particular circumstances is not void in relation to other circumstances.
- 10.3 In the event that any provision or part thereof cannot be given effect for any reason, then the provision or part thereof which cannot be given effect is severed and read down restrictively and the remaining provisions remain binding on the parties.
- 10.4 No waiver of a provision of any Contract is a further or continuing waiver of the term or provision.
- 10.5 As far as the obligations of the Buyer are concerned, time is of the essence.
- 10.6 Where the Buyer consists of more than one legal person, they will be jointly and severally liable to Heat Treatment on all accounts.
- 10.7 Where Heat Treatment's performance of a Contract is to be by instalments, then that part of the Contract as relates to one instalment is severable from other parts of the Contract. Any failure on the part of Heat Treatment to deliver any instalment within the time stated does not entitle the Buyer to repudiate the contract with regard to that instalment or any of the remaining instalments.
- 10.8 A Contract is governed by the law of Queensland, irrespective of the place of delivery.
- 10.9 Any proceedings in relation to a Contract or these Terms and Conditions must be commenced in the relevant Court in Brisbane.
- 10.10 A certificate signed by Heat Treatment's manager as to Work performed, amounts due, interest calculations or payments received is conclusive evidence of the matter and admissible in any legal proceedings.

- 10.11 Headings are for convenience only and do not affect the construction of clauses.
- 10.12 A notice, invoice, or document is served if sent by ordinary prepaid post or by facsimile to the Buyer at its last known address or facsimile number (as appropriate). If sent by post the notice, invoice or document is received on the next working day after posting, and if sent by facsimile is received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.