



## **EAST CAROLINA METAL TREATING, INC.**

### **Terms of Sale**

All sales of products and services by East Carolina Metal Treating, Inc. (“ECMT” or “Seller”) to a purchaser of ECMT products or services (“Buyer”) are made pursuant to the terms and conditions set forth in these Terms of Sale, whether or not these Terms of Sale are executed by Buyer. All ECMT proposals, price quotations, acceptances of any Buyer purchase orders and all sales of ECMT products and services are expressly made conditional upon buyer’s acceptance of these Terms of Sale, notwithstanding any receipt or acknowledgement of Buyer’s purchase order form containing additional or different provisions. All additional or conflicting terms contained in any purchase order or other documentation of Buyer are hereby objected to and such terms shall be of no effect and shall not be binding on ECMT.

Payment Terms. Unless Buyer has received prior credit approval from ECMT, all purchases shall be due and payable upfront. Payment terms for approved credit accounts are net 30 days from date of invoice. A service charge of 1.5% per month will be charged on past due invoices. If a Buyer’s account remains past due for more than 60 days, such past due account is subject to collection. Accounts subject to collection will be referred to an attorney for collection. Buyer agrees to pay all costs and expenses of collection, including reasonable attorney’s fees incurred by ECMT in connection with such collection. Upon any failure of Buyer to pay any fees when due, ECMT may suspend its performance of services and/or withdraw credit approval for the customer and all orders thereafter must be prepaid in advance. Extension or continuation of any credit approval shall be at the sole discretion of ECMT, which may withdraw or reduce credit approval of Buyer at any time in its sole discretion.

### MTI STATEMENT OF LIMITED LIABILITY<sup>1</sup>; DISCLAIMER OF WARRANTY

(Please Read Carefully)

ALL ECMT WORK IS PERFORMED SUBJECT TO THE FOLLOWING:

THE BUYER OF METAL TREATING SERVICES FROM THE SELLER, UNDERSTANDS THAT EVEN AFTER EMPLOYING ALL THE SCIENTIFIC METHODS KNOWN TO THE SELLER, HAZARDS STILL REMAIN IN METAL TREATING. THE BUYER THEREFORE AGREES THAT SELLER’S LIABILITY SHALL NOT EXCEED TWICE THE AMOUNT OF THE CHARGES ACTUALLY PAID BY BUYER FOR THE WORK DONE ON ANY MATERIAL, EXCLUDING DELIVERY OR SHIPPING CHARGES. THE BUYER AGREES AND UNDERSTANDS THAT THIS LIMITATION OF LIABILITY IS NOT AN EXCULPATORY CLAUSE. THE REIMBURSEMENT AND FULL LIABILITY OF THE SELLER SHALL NOT EXCEED TWICE THE AMOUNT OF THE CHARGES ACTUALLY PAID BY BUYER FOR

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THE WORK DONE BY THE SELLER ON ANY MATERIAL AND EXCLUDING SHIPPING OR DELIVERY CHARGES. THIS IS INTENDED TO REIMBURSE THE BUYER FOR THE CHARGES AND TO FULLY COMPENSATE THE BUYER IN THE AMOUNT OF THE CHARGES. THIS TERM APPLIES TO ALL WORK DONE BY THE SELLER EXCEPT WHERE OTHERWISE AGREED TO IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE SELLER.

THE BUYER, BY CONTRACTING FOR METAL TREATMENT, AGREES TO ACCEPT THE LIMITS OF LIABILITY AS EXPRESSED IN THIS STATEMENT TO THE EXCLUSION OF ANY AND ALL OTHER PROVISIONS AS TO LIABILITY THAT MAY BE SET FORTH IN THE BUYER'S OWN INVOICES, PURCHASE ORDERS OR OTHER DOCUMENTS. IF THE BUYER PROPOSES A DIFFERENT OR ADDITIONAL LIABILITY PROVISION, THE SAME MUST BE AGREED TO IN WRITING, MUST EXPRESSLY REFER TO THE INTENT TO SUPERSEDE THE LIMITATIONS OF LIABILITY CONTAINED HEREIN AND MUST BE SIGNED BY AN OFFICER OF THE SELLER BEFORE WORK IS STARTED OR SERVICES ARE PROVIDED. IN SUCH EVENT, THE BUYER UNDERSTANDS THAT A DIFFERENT CHARGE FOR SERVICES MUST BE AGREED ON, REFLECTING THE HIGHER RISK TO THE SELLER AND THAT NO WORK WILL BE STARTED UNTIL BOTH THE SELLER AND THE BUYER HAVE SIGNED AN AGREEMENT SETTING FORTH THE NEW CHARGES AND TERMS OF LIABILITY. OTHERWISE, THE TERMS SET FORTH HEREIN ARE BINDING ON THE BUYER.

IT IS AGREED BY THE BUYER AND THE SELLER THAT THE INABILITY TO DISCOVER A DEFECT WITHIN A REASONABLE PERIOD OF TIME AFTER THE RECEIPT OF A SHIPMENT OF HEAT TREATED MATERIAL, NOT TO EXCEED FIVE (5) BUSINESS DAYS, WILL NOT VOID THE LIMITATION OF LIABILITY CONTAINED IN THIS AGREEMENT. IT IS THE BUYER'S OBLIGATION TO NOTIFY THE SELLER IF IT DOES NOT AGREE TO THE LIMITATION OF LIABILITY CONTAINED HEREIN AND A FAILURE ON THE PART OF THE BUYER TO DO SO IN WRITING BEFORE WORK STARTS WILL BE DEEMED ACCEPTANCE OF THIS LIMITATION OF LIABILITY.

THE SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, AS TO THE PERFORMANCE OR CAPABILITIES OF THE MATERIAL AS HEAT TREATED, OR THE HEAT TREATMENT. THE AFOREMENTIONED LIMITATION OF LIABILITY STATED ABOVE IS SPECIFICALLY IN LIEU OF ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, AND ANY OTHER SUCH OBLIGATION ON THE PART OF THE SELLER.

THE SELLER'S LIABILITY TO THE BUYER SHALL CEASE ONCE ANY FURTHER PROCESSING, ASSEMBLING OR ANY OTHER WORK HAS BEEN UNDERTAKEN BY THE BUYER OR ANY THIRD PARTY.

No claims for shortage in weight or count will be accepted unless presented in writing within five (5) business days after receipt of materials by the Buyer. No claims will be allowed for shrinkage, expansion, deformity, or rupture of material in treating or straightening, except by prior written agreement, as above, nor in any case for rupture caused by or occurring during subsequent grinding. Whenever the Seller is given material with detailed instructions as to treatment, the Seller's responsibility shall end with the execution and completion of those instructions in all material respects. Failure by the Buyer to indicate plainly and correctly the kind of material (i.e., proper alloy designation) to be treated, 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. When the Buyer provides specifications for the heat treating service to be provided, makes changes in the kind of materials (i.e. proper alloy designation) to be treated, or changes the process to be used, the Buyer specifically understands and agrees that this LIMITATION OF LIABILITY shall remain in effect, but that additional charges for services will be due and owing to cover the additional expense incurred as a result of changes made by the Buyer.

The Buyer agrees there will be no liability on the Seller in contract or tort (including negligence and strict liability) for any special, indirect or consequential damages arising from any reason whatsoever, including but not limited to personal injury or property damages, or for any loss of profits, loss of production, recall or any other losses, expenses or liabilities allegedly occasioned by the work performed on the part of the Seller.

No agent or representative is authorized to alter the terms and conditions of this Statement of Limited Liability, other than in a writing duly signed by an officer of the Seller.

Force Majeure. In no event shall ECMT be liable to Buyer or any other party for delays in the performance of work caused by accident, labor disputes, embargoes, shortage or labor or materials, acts of God, acts of terrorism or war, changes in applicable laws, rules or requirements, interruptions in power supply or telecommunications systems or other events beyond ECMT's reasonable control.

Governing Law. Buyer agrees that these Terms of Sale shall be construed under the laws of the State of North Carolina.

ACCEPTED:

Name of Buyer: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_