

Thermal Specialties, LLC
Thermal Specialties Heat Treating
Thermal Specialties of Texas

**Terms & Conditions of Sale
of Metal Treating Services**

The proposal by Thermal Specialties Heat Treating, LLC and Thermal Specialties of Texas, LLC, (collectively, “Thermal”), is subject to the following terms and conditions of sale unless otherwise stated in the proposal.

THE BUYER OF METAL TREATING SERVICES FROM THERMAL UNDERSTANDS THAT, EVEN AFTER EMPLOYING ALL KNOWN SCIENTIFIC METHODS, HAZARDS REMAIN IN METAL TREATING. THE BUYER, THEREFORE, AGREES THAT THERMAL’S LIABILITY SHALL NOT EXCEED TWICE THE AMOUNT OF THE CHARGES FOR THE WORK DONE ON ANY MATERIAL. THE BUYER AGREES AND UNDERSTANDS THAT THIS LIMITATION OF LIABILITY IS NOT AN EXCULPATORY CLAUSE. THE REIMBURSEMENT AND FULL LIABILITY OF THERMAL SHALL NOT EXCEED TWICE THE AMOUNT OF THE CHARGES FOR THE WORK DONE BY THERMAL ON ANY MATERIAL. 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 THERMAL EXCEPT WHERE OTHERWISE AGREED TO IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THERMAL.

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 AND SIGNED BY AN OFFICER OF THERMAL 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 THERMAL AND THAT NO WORK WILL BE STARTED UNTIL BOTH THERMAL 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 THERMAL 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 THERMAL 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.

THERMAL 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 THERMAL.

THERMAL’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 entertained 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 Thermal is given material with detailed instructions as to treatment, Thermal's responsibility shall end with the execution and completion of those instructions. Failure by the Buyer to indicate plainly and correctly the kind of material (e.g., 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 (e.g. 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 Thermal 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, property damages, loss of profits, loss of production, recall or any other losses, expenses or liabilities allegedly occasioned by the work performed on the part of Thermal.

No agent or representative is authorized to alter the conditions, except in writing duly signed by an officer of Thermal.

Thermal's services and work are expressly limited to the terms and conditions contained on the face and back of Thermal's quotation, purchase order, sale acknowledgement or other forms. Any different or additional terms contained in any of the Buyer's forms are hereby deemed to be a material alteration and notice of objection to them is hereby given.

Additional Terms and Conditions

Prices & Terms

All prices are subject to change without notice. Terms are 30 days net subject to approved credit. Thermal has the right to adjust pricing in the event of major changes in market pricing of energy, fuel, materials, etc.

Shipments can be expedited, prior to establishing credit, by cash, check, or credit card payment with order for full amount.

A signed purchase order constitutes acceptance of, and does not replace these terms and conditions of sale.

Acceptance

The proposal is void at Thermal's option unless accepted within 30 days of the dated submitted hereof. All previous agreements, understandings and quotations are superseded by this proposal, and no modification hereof shall be binding unless duly accepted in writing by the purchaser and approved by Thermal.

Orders are accepted and approved in Tulsa, Oklahoma.

Delivery / Force Majeure

Delivery of product shall be made FOB shipping point unless otherwise expressly indicated on the Purchase Order. Manufacture, shipment or delivery will be subject to any prohibition, restriction or regulation imposed by the Federal or any State government or any subdivision or agency thereof, and Thermal shall not be liable for any delay or failure to perform, in whole or in part, caused by any such prohibition, restriction or regulation, or by fires, floods, strikes, work stoppages, accidents, casualties, inability to procure supplies and raw materials, delays in transportation, shortage of cars or other force majeure causes beyond Thermal's control. If delivery of any special items is delayed by Buyer for more than 30 days after completion, Thermal may invoice for such items and hold for Buyer's disposition for a reasonable period of time.

Shipping Dates

All dates fixed for shipment, delivery and installation as set forth herein are made in good faith, and Thermal will use all reasonable diligence to insure adherence to these promises, but Thermal shall not be liable for damage or loss due to delay.

Liability & Indemnity

Thermal shall not be liable for loss, damage or delays to work caused by defective material or workmanship, transportation, accident, fire, strike, civil, or military commotion or riot, war, labor troubles, act of God or any other cause beyond Thermal's control. Purchaser further agrees that in no event, shall Thermal on any claim of any kind have any liability for loss of use, loss of profits or for any indirect, incidental, or consequential damages. Nothing in these Terms and Conditions shall be constructed to limit in any way the rights and remedies available under the Uniform Commercial Code.

Upon order acceptance, except to the extent that an injury or damage to person or property is due to the negligence of Thermal, Purchaser shall indemnify, defend and hold Thermal, its officers, employees, agents and representatives, harmless from liabilities, losses, damages, claims, suits, costs or expenses, including reasonable attorney's fees, arising out of or in connection with performance of work hereunder or any act or omission of Thermal, its employees, subcontractors or agents to the extent its insurance applies.

Limited Insurance Coverage

In the event that losses or damages occur while items are being shipped to or from Thermal's customers, or if losses or damages occur while items are in Thermal's possession, Thermal will not be liable for such losses or damages to the extent of any amount in excess of the insurance coverage that Thermal maintains to cover such losses and damages. Thermal will maintain cargo insurance limited to three hundred thousand dollars (\$300,000) per customer shipment. Thermal will maintain insurance for losses or damages that occur while customer items are in Thermal's possession limited to two hundred thousand dollars (\$200,000) per occurrence. Thermal will attempt to arrange for higher limits of insurance coverage for selected shipments and items only at the request of the customer and only on terms and conditions acceptable to Thermal as indicated by the signature of a Thermal officer on a letter from the customer requesting the higher coverage or as indicated by email confirmation from a Thermal officer. Upon request, Thermal will furnish certificates of coverage from its insurance carrier evidencing the insurance coverage provided.

Damage in Transit

Thermal's responsibility ceases upon delivery of material in good order to the common carrier at the point of shipment. The Purchaser is to check incoming shipment upon arrival and to file claims with the carrier's agent for shortages or in-transit damages.

Insurance

Thermal will comply with Workers Compensation or Employer's Liability laws that apply to our operations under this proposal; and upon request we will furnish certificates from our carrier evidencing the type of public liability and property damage insurance and limits or policies carried.