

# ***O&W HEAT TREAT, INC.***

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SPECIALISTS IN AEROSPACE METALLURGICAL PROCESSES • ATMOSPHERE BRAZING & HEAT TREATING

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## **O&W Heat Treat, Inc. Standard Terms and Conditions of Sale** **- Sale of Goods and Services** **Revision I 1/31/2011**

Purchase orders are accepted and work is performed at O&W Heat Treat, Inc. (the Seller) subject to the following Terms and Conditions of Sale:

### **Purchase Orders**

Terms, conditions or other general standards of performance flowed down by Buyer's purchase order will be observed when accepted in writing by Seller and are not binding on Seller unless so accepted, and when not in conflict with, or inconsistent with, this document. Seller hereby expressly objects to and rejects any terms, conditions or other standards of performance proposed by Buyer by way of purchase order or otherwise which are different from or in addition to these Standard Terms and Conditions of Sale. Buyer agrees that Buyer's submission of a purchase order to Seller shall constitute Buyer's irrevocable acceptance of these Terms and Conditions of Sale.

Prices stipulated on purchase orders are subject to review by the Seller. Seller reserves the right correct any error in pricing. Quoted prices are in U.S. dollars. Quoted prices are firm for 60 days, except orders requiring precious metals (e.g., silver, gold or palladium bearing braze alloys) are firm for 1 day. Seller reserves the right to impose extra charges for special or extraordinary packaging requirements at Seller's discretion, on a time and material basis.

Unless otherwise specified, terms of payment for accounts in good standing are Net 30 days from the date of the invoice. At Seller's discretion, COD payment terms may be imposed upon Buyer, or alternative terms of payment may be negotiated between Seller and Buyer. Late charges shall be added to overdue accounts at the rate of 1 1/2% per month. Payment for partial shipments made for the convenience of the Buyer are subject to all payment terms as stated above - Seller agrees not to withhold payment for completion of entire order.

Whenever purchase order includes specific, detailed instructions regarding processing times, temperatures, atmospheres, fixturing, etc., Seller's responsibility shall end with the carrying out of those instructions. The Buyer is responsible for flowing down a specific revision level for all specified processing and quality documents. If we are not in possession of the revision specified, we will contact you and ask that you provide us with a copy of the latest revision of the specification in question. If we are in possession of a later revision than that specified on the purchase order, we will work to the latest revision in accordance with prime contractor requirements, as applicable. When Buyer P.O. specifies "latest revision" we will process to the latest revision in our possession. When an O&W certification references (e.g., "ref:") a specification, this may indicate that not all requirements of the specification have been met, or that the revision level specified is unavailable, or that the specification referenced has been used as a guideline only, on a best effort basis, to meet the intent of the purchase order or blueprint. This definition is also applicable to formal quotations.

Buyer must clearly identify the Prime End User, if applicable on the purchase order. O&W will assume that the Buyer has confirmed, via the applicable Prime Contractor approved source list, that we are an approved source for the process or processes specified in the purchase order. In the absence of a clearly identified Prime on the purchase order we will assume that the order is not for Prime Contractor End Use. Buyer must explicitly state or reference on their purchase order that O&W is to process to an approved Frozen or Fixed Process, if such a process exists.

No verbal changes to purchase orders will be accepted. Changes must be made in writing by issuing a new purchase order or a revision to an existing purchase order.

Purchase orders must document the braze alloy specification and lot number for pre-placed braze alloy - we accept no responsibility for customer supplied pre-placed braze alloy.

Incorrect purchase order instructions and other errors flowed down by the customer, including, but not limited to: incorrect

material, specification, hardness requirements, braze alloy, incorrect fixture material, plated fixtures, absent nickel flash, defective nickel flash, etc. shall be the sole responsibility of the customer, and will incur additional charges if additional processing, testing or evaluation is required. The customer shall also be responsible for costs to repair Company equipment damaged or rendered inoperable as a direct result of the incorrect information/error/defect/material, as well as loss of income directly attributable to said incorrect information/error/defect/material. Under no circumstances will O&W accept responsibility for review of customer supplied raw material certifications - it is the Buyer's responsibility to correctly specify the raw material on the purchase order, and it is the purchase order information alone that we will use to process parts or material. We will not perform a cross-check of any supplied raw material certifications vs. the purchase order call-out, nor will we check any supplied certification vs. the applicable raw material specification. Our processing of supplied parts or raw material should in no way be interpreted as an implicit review of any supplied raw material certifications.

O&W Heat Treat, Inc. quality systems are in full compliance with Nadcap Quality System requirements for Special Processors, via successful completion of the AC7004 Audit Inspection and Test Quality System audit, which is performed in conjunction with the applicable SAE AS7003 Special Process audit.

Special record retention requirements which exceed our default of 11 years (e.g., Flight Safety) will be accommodated, but will incur additional charges

### **Receiving**

Customer drivers (including contracted delivery service drivers) are responsible for ensuring that the correct blueprint/purchase order package is positively attached to the parts/parts container before leaving the building. We will undertake a reasonable effort to ascertain that incoming parts match their accompanying paperwork, whether it is a blueprint, a physical description on the purchase order, tags or other form of identification used by the customer.

We will perform a reasonable incoming inspection for damage and count, but will not be responsible for undetected damage or incorrect counts in as-received orders, nor will we use count as the sole means of verifying part to purchase order traceability. Raw material (bars, blanks etc.) must be identified on the purchase order with easily verifiable dimensions (e.g., OD x length). We will not inspect all incoming orders 100% for count, damage, nicks, dings, etc.

### **Delivery**

Delivery requirements flowed down by the customer on a purchase order received by O&W Heat Treat, Inc. do not constitute a contractual obligation to comply on the part of O&W unless so agreed upon in writing via a formal quotation or other document. Delivery lead times change on a daily basis, and verbal delivery promises may change due to equipment failures, force majeure, receipt of Government/Defense rated DX/DO high priority orders, prime contractor prioritizations, etc. We will make every effort to satisfy delivery requirements whenever possible, but we will not accept any debit, penalty or liability of any kind owing to late delivery based on unilaterally stipulated delivery requirements on purchase orders.

### **Shipping / Packaging**

O&W Heat Treat, Inc. will make every effort to return material in the packaging supplied; however, damage owing to inadequate customer packaging shall be the sole responsibility of the customer. In instances where customer supplied packaging is clearly damaged, broken, inadequate or otherwise unsuitable to reuse, we will make every effort to return parts in packaging selected to prevent damage, but will not be held liable for any ensuing damage. If necessary, we will contact the customer to obtain proper packaging for parts if we cannot supply suitable packaging.

It is the responsibility of the customer's representative to deliver material to the O&W Receiving bench in a sound, undamaged condition - O&W personnel will assist in this regard as required. Damage to material which results from improper incoming or outgoing handling solely on the part of the customer representative (e.g., parts spilled in driveway) shall be the responsibility of the customer. When picking up completed parts, customer representative signature on the O&W Office Copy shall constitute receipt and acceptance of the correct quantity of parts, in proper packaging. Packaging and count concerns must be addressed before parts leave our facility. We will not accept nonconforming material reports for count or packaging issues once an order has been signed for and has left our facility. We are more than happy to verify counts, and to improve or optimize outgoing packaging, upon request.

Seller's responsibility for orders shipped via common carrier, including, but not limited to UPS, Federal Express, DHL and other freight carriers, ends when said carrier takes possession of the package(s). Unless otherwise agreed to in writing by the parties, or when explicitly specified on the purchase order, Seller has no obligation to obtain insurance for Buyer covering orders in transit to Buyer.

Parts drop shipped by O&W Heat Treat, Inc. to third party companies as a professional courtesy will be performed on a best effort basis. O&W Heat Treat, Inc. shall not be held liable for any special, indirect or consequential damages arising from late delivery or other incidents or accidents which may occur in transit. We undertake a reasonable effort to ensure that any customer supplied paperwork intended for said third party company is firmly attached to the parts packaging, but require that the customer follow-up with said third party to verify proper receipt of both parts and correct paperwork.

### **Force Majeure**

Seller will not be liable or otherwise responsible for any damage, loss, fault, or expenses arising out of delays in manufacturing, shipment or other non-performance caused or imposed by: strikes, fires, disasters, riots, acts of God; intervention of government, war or threat of war, acts of terrorism, conditions similar to war, sanctions, blockades, embargoes; acts of Buyer; shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities; governmental action, subcontractor delay or any other cause, condition or circumstance beyond Seller's reasonable control (collectively, "Force Majeure"). If there is any such delay or nonperformance, then Seller, upon notice to Buyer, may, at its option, and without liability, revoke all or any portion of its acceptance of Buyer's Purchase Order and/or extend any date upon which any performance thereunder is due. However, Seller shall use commercially reasonable efforts to give written notice to the Buyer whenever such contingency or other act becomes reasonably foreseeable.

### **Liability**

It is recognized that even after employing sound metallurgical practice, risks still remain in metallurgical processing. While Seller will make every effort to minimize heat treat related distortion and excess flow of braze alloy, Seller cannot control normal metallurgical growth/shrinkage, distortion due to normal relief of machining/manufacturing stresses or normal braze flash/fillet formation. The parties expressly agree that Buyer's sole and exclusive remedy against the Seller shall be for repair of, or reimbursement for, the value of services provided under the applicable purchase order.

The Seller shall not be held liable for any special, indirect or consequential damages arising from any reason whatsoever, including, but not limited to, loss of profits, loss of production, loss of material, recall or any other losses, expenses or liabilities allegedly occasioned by the work performed by the Seller.

The Seller's liability shall cease once any further processing, machining, assembling or any other work has been undertaken on the material in question - any claims must be reported prior to that time, and in any event within 5 days following the date the Buyer discovered, or by reasonable inspection should have discovered, any breach of contract. Any cause of action for breach of contract shall be brought within one (1) year from the date the alleged breach was discovered, or should have been discovered, whichever occurs first.

### **Limitation of Liability**

In no event shall Seller be liable for any consequential, special, incidental, indirect or punitive damages to any person, whether based upon breach of contract, negligence, strict liability, tort, or any other theory, regardless of whether the repair or reimbursement remedy set forth above fails in its essential purpose or for any other reason whatsoever. "Consequential damages" for purposes hereof shall include, without limitation, loss of use, income or profit, or losses sustained as the result of injury (including death) to any person or loss or damage to property.

### **Testing**

Any purchase order, B/P, or specification required testing (e.g., tensile testing) HAS NOT been performed at this facility unless explicitly reported in the body of the certification.

Unless otherwise specified, actual number of pieces hardness tested (as listed on the certification) conforms to O&W's internal hardness sampling plan, which is based on an AQL of 2.5. The actual number of pieces tested may not conform to the processing specification requirements. It is the customer's responsibility to ensure that the total number of pieces tested meets specification requirements.

### **Trademarks**

The purchase of services from Seller shall not entitle Buyer to use, register, or otherwise identify Buyer or its business with the name, trademark, service mark or other identity of Seller without express written permission from Seller. All such marks and goodwill associated with such marks remain the sole and exclusive property of Seller.

### **Non-disclosure**

Buyer acknowledges, upon issuance of the Purchase Order, that certain information of Seller that may or may not have been patented, may be disclosed by Seller to the Buyer for certain limited purposes, and Buyer covenants and agrees, through its issuance of the Purchase Order and without further action required on the part of Buyer and Seller, to the following Terms and Conditions of Sale:

A. As used herein, "Proprietary Information" shall mean all Seller information disclosed in any medium (including, without limitation, electronically), orally, by samples or in writing, including, but not limited to, processes, procedures, know-how, trade secrets, technical and marketing information, data, product and processing ideas, inventions, patent applications, designs, drawings, prototypes, specifications for component parts used to manufacture Seller's assemblies, memoranda, correspondence, notes and plans. The provisions of this agreement shall apply retroactively to any Proprietary Information that may have been disclosed in connection with discussions and negotiations regarding any project prior to the effective day of this agreement.

B. Any information which (i) was in the possession of the Buyer prior to receiving it from Seller, or (ii) was known, or hereafter may become known, in the public domain, the public literature or generally in the industry through no fault of the Buyer, or (iii) was disclosed, on an unrestricted basis to the Buyer from a third party source which has the right to disclose such information without violation of any obligation of confidentiality, shall not be entitled to protection as Proprietary Information.

C. Subject to Paragraph B of this Section 15, upon Buyer's receipt of any Proprietary Information, the Buyer must only use the Proprietary Information as authorized in writing by Seller and shall in no event be used to benefit any third parties. The Buyer shall take reasonable care to protect the Proprietary Information from unauthorized use or disclosure for any purpose other than as authorized hereunder. As a minimum, the Buyer shall give the Proprietary Information at least the same degree of protection as it gives its own proprietary or confidential information.

D. The Buyer agrees not to reproduce, re-engineer, disassemble, modify or transcribe any of Seller's Proprietary Information, without Seller's prior written consent, and further agrees that it shall return all such Proprietary Information, including material and parts embodying any portion of such Proprietary Information, to Seller upon the written demand of Seller.

E. No other use of Seller's Proprietary Information, in whole or in part, may be made by the Buyer without the prior written consent of Seller. All know-how, ideas, inventions, discoveries, modifications and improvements, whether patentable or not, relating to Seller's Proprietary Information shall be the sole property of Seller.

F. The Buyer further agrees not to disclose, publish or otherwise disseminate Seller's Proprietary Information to any person or entity for any purpose whatsoever, except as specifically authorized hereunder. The Buyer shall have the right to disclose the Proprietary Information only to those of its employees or customers who need to know such information for the fulfillment of the stated purpose. The Buyer shall ensure that all such employees or customers execute confidentiality agreements imposing obligations no less restrictive than herein.

G. No rights or obligations other than those expressly recited in this Section are to be implied from the sale of the services. No license or transfer of any property right or interest in the Proprietary Information is intended.

#### **Web Page Disclaimer**

O&W Heat Treat, Inc.(O&W) has taken reasonable measures to ensure that the information and data presented on this website are accurate and current. However, the information and data contained herein may not necessarily be comprehensive, complete, accurate or up to date.

Further, O&W makes no express or implied warranty regarding such information or data, and hereby expressly disclaims all legal liability and responsibility to persons or entities who use or access this site and its content, based on their reliance on any information or data that is available through this website including, but not limited to, any liability for errors, inaccuracies, omissions or misleading or statements.

This general disclaimer is in addition to, and not in lieu of, any other disclaimers found on pages, applications or programs within this site. In addition, the terms of this disclaimer extend to the O&W, its officers, and employees.

#### **Links Page Disclaimer**

The O&W website provides links to other websites for convenience and informational purposes only. Users should be aware that when they select a link on the O&W website to an external website, they are leaving O&W's site. Linked sites are not under the

control of O&W, and O&W is not responsible for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites. O&W is not responsible for any transmission received from a linked site. The inclusion of a link does not imply endorsement by O&W of the site, its content, advertisers or sponsors. External sites may contain information that is copyrighted with restrictions on reuse. Permission to use copyrighted materials must be obtained from the original source and cannot be obtained from O&W.

#### **Entire Agreement**

These standard Terms and Conditions of Sale, together with the terms or conditions contained on the face side of Seller's invoice, quotation, certification or packing slip, constitute the entire agreement between Seller and Buyer with respect to the matters contained therein, and supersede all prior oral or written representations, proposals, correspondence, discussions, negotiations and agreements. No course of prior dealings, acceptance or acquiescence in a course of performance and no usage of the trade shall be relevant to supplement, explain or modify any terms contained herein. Any and all representations, promises, warranties or statements by an agent or employee of Seller that differ in any way from the Terms and Conditions of Sale hereof shall be given no effect or force. No waiver or alteration of terms herein shall be binding unless done so in writing, and signed by an executive officer of the Seller.

#### **Priority**

In the event of any inconsistency between the provisions in these Standard Terms and Conditions of Sale and the Purchase Order, precedence shall be given first to these Standard Terms and Conditions of Sale, and second to the special Terms and Conditions of Sale contained on the face of the Purchase Order when accepted, in writing, by Seller.

#### **Severability**

If any provision of these Standard Terms and Conditions of Sale is deemed invalid or unenforceable by any court of competent jurisdiction or under any statute, regulation, ordinance, executive agreement or other rule of law, such provision shall be deleted or modified, at the election of Buyer and Seller, but only to the extent necessary to comply with such ruling, statute, regulation, ordinance, agreement or rule, and the remaining provisions of these Standard Terms and Conditions of Sale and the Purchase Order shall remain in full force and effect.

#### **Non-Waiver**

No change, modification or waiver of any provision of these Standard Terms and Conditions of Sale shall be valid or binding unless it is accepted by Seller. A waiver by either party of any breach or failure to enforce any term or condition of these Standard Terms and Conditions of Sale shall not in any way affect, limit or waive such party's right at any time to enforce strict compliance with that or any other term or condition of these Standard Terms and Conditions of Sale of Sale.

#### **Binding Effect / Non-Assignment**

This contract shall be binding upon and shall inure to the benefit of the successors, and permitted assigns of Buyer and Seller, provided, however, that Buyer may not assign any portion of its rights or delegate any portion of its obligations hereunder or under any Purchase Order without in each instance obtaining Seller's prior written consent. Any attempted assignment by Buyer or assignment by Buyer of this contract without Seller's prior written consent is void.

#### **Seller's Performance Excused Upon Buyer's Breach**

In addition to the rights and remedies conferred upon Seller by law or in equity, Seller shall not be required to proceed with the fulfillment of any Purchase Order or the performance of any contract if Buyer is in default in the performance of any order or contract with Seller, and in cases of doubt as to Buyer's financial responsibility, shipments under this order may be suspended or sent sight draft with bill of lading attached by Seller. Additionally, in the case of subsequent orders or, in the case of open Purchase Orders, Seller is not required to proceed with the fulfillment of any subsequent order or perform such open Purchase Order if Buyer is in breach with regard to any prior fulfilled orders, including, without limitation, non-payment.