

## 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.

**"Confidential Information"** means all confidential, proprietary, technical, or otherwise sensitive information of the Disclosing Party (whether or not marked "confidential") which is disclosed or otherwise made available to the Receiving Party, including, without limitation:

- (i) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Disclosing Party or any of its Representatives;
- (ii) proprietary or confidential information of a third party to whom the Disclosing Party owes an obligation of confidentiality;
- (iii) information derived or produced partly or wholly from such information including any summaries, notes, drawings, calculations, conclusions or computer modelling; and
- (iv) trade secrets which are or information which is capable of protection at law or equity as confidential information or is otherwise confidential in nature.

The term "Confidential Information" includes, but is not limited to:

- (v) Processes, formulas, inventions, and technology; business methods, methods of manufacture or manufacturing techniques, solutions engineering, know-how, designs, drawings, and specifications, all other trade secrets, discoveries, concepts and ideas including, without limitation, the results of research and development activities;
- (vi) information in relation to the Goods, the Services, or their commercialisation;
- (vii) materials and information relating to the Disclosing Party's business and activities and the manner in which the Disclosing Party does business; and
- (viii) Any other materials or information related to the business or activities of the Disclosing Party which are not generally known to the other party or others engaged in similar businesses or activities.

However, Confidential Information does not include information which:

- (ix) at the time of disclosure is generally known to the public through no fault of the Receiving Party or its representatives (but only after, and only to the extent that, it becomes generally known to the public);
- (x) the Receiving Party can demonstrate through written records was known to it at the time of disclosure, free of restriction; or
- (xi) the Disclosing Party has disclosed or discloses to a third party free of any obligations of confidentiality (but only after, and only to the extent that, the Disclosing Party discloses it to a third party).

- (xii) It is not a breach of these terms and conditions for the Receiving Party to disclose Confidential Information pursuant to the order, subpoena, or other requirement of a court, administrative agency, or governmental body, provided that the Receiving Party informs the Disclosing Party of its intent to make such disclosure, and does not inhibit the Disclosing Party from taking whatever legal steps it considers necessary to attempt to preserve the confidentiality of the Confidential Information.
- (xiii) It is not a breach of these terms and conditions for a party to use Confidential Information it receives to enforce its rights.
- (xiv) The parties acknowledge that Confidential Information is not regarded as being generally known to the public by reason only of the fact that some portion of it is public or that information is publicly available which, together with other information, could be used to produce any Confidential Information.

**"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.

**"Disclosing Party"** means, in relation to Confidential Information, the party which discloses, communicates or gives access to that Confidential Information to the other party.

**"Intellectual Property Rights"** means all rights with respect to intellectual property throughout the world, and includes any and all:

- (i) patents and other patent rights (including all right, title and interest in all patent applications and patents pending, all letters patent or equivalent rights and applications, and any reissue, extension, division, continuation or continuation-in-part applications in relation to all subject matter, including methods of manufacture or business methods), design rights, industrial design rights and utility model rights;
- (ii) trade secrets and other rights with respect to confidential or proprietary information, and other rights with respect to know-how, inventions, discoveries, improvements, formulae, algorithms, processes, technical information and other technology;
- (iii) copyrights, copyright registrations and copyright rights (including copyrights, copyright registrations and copyright rights with respect to computer software, firmware, programming tools, drawings, specifications, databases and documentation), moral rights, related rights; and

any and all other intellectual property, industrial property, and similar rights, whether or not subject to statutory registration or protection.

**"Event of Default"** has the meaning set out in clause 9.1.

**"Goods"** means any products supplied by Heat Treatment pursuant to these Terms and Conditions, including any item owned by the Buyer which Heat Treatment treats or performs Work on at the request of the Buyer as described in a written quotation or Offer, or on a delivery slip and shall include any Goods to be provided as part of any Services.

**"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.

**"Offer"** shall mean the quotation or tender provided to the Buyer by Heat Treatment, whether or not with these terms and conditions.

**"Order"** means an order placed by the Buyer based on an Offer.

**"Price"** means the price to be paid by the Buyer for the Goods and Services.

**"Receiving Party"** means in relation to Confidential Information, the party other than the Disclosing Party.

**"Representatives"** means any legal or financial/accounting advisor or any related entity or subcontractor duly appointed by a party in accordance with these terms and conditions.

**"Services"** means the services described and referred to in a written quotation or Offer, which has been provided to the Buyer by Heat Treatment.

**"PPSA"** means the *Personal Property Securities Act 2009 (Cth)*.

**"Terms and Conditions"** means these terms and conditions.

**"Work"** means the provision of Goods or Services to the Buyer and shall include the modification, testing, treatments or services supplied by Heat Treatment to a Buyer in relation to Goods as described in a written quotation or on the delivery slip.

- 1.2 All Work performed by Heat Treatment is performed on the basis set out in these Terms and Conditions, which may be amended from time to time by Heat Treatment at 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 purchase order or 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 pursuant to these Terms and Conditions.
- 1.4 Where any special conditions relating to the performance of specific Work are inconsistent with the Terms and Conditions, then unless the parties otherwise agree in writing, the special conditions shall prevail over the Terms and Conditions to the extent of the inconsistency.

## **2. Orders**

- 2.1 A Contract is created upon acceptance by Heat Treatment of an 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 formed) 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 or Offer after the date specified as its expiry date, or if none, 7 days from the date of the quotation or Offer; 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 be based on an Offer and:
- (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, including any Goods which 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 and Offers 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 or Offer 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 quotation or Offer 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 Offer, or if the Order is not pursuant to a quotation or Offer, the date of delivery.
- 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 correct miscalculations or errors in quotations, Offers or Contracts which are obvious on their face.
- 3.5 Heat Treatment reserves the right to vary any quotation or Offer if the price of the materials which are necessary to perform the Work vary significantly from the date of the quotation to the date on which the Work or any part of the Work is due to be performed. Any variation in a quotation or Offer must be accepted by the Buyer before the commencement of the Work.

### **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 or the whole 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 any other amount 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 and then in reduction of the principal;

- (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 in relation to any Work shall remain liable for payment of the Price, notwithstanding any change in ownership or structure of the Buyer, and such time as a fresh application for credit in the name of the new Buyer is approved by Heat Treatment; and
  - (f) the Buyer will keep Heat Treatment fully notified of all changes in name, address, structure and ownership within 48 hours of any such change.
- 4.4 Where the Work performed forms part only of a Contract, and a quotation or Offer based on or is determined in relation to the whole Contract, Heat Treatment may vary the amount payable to reflect the value of that particular Work.
- 4.5 All quotations or Offers are prepared on the basis that the Work will be completed in one continuous operation. Heat Treatment may include an additional charge for any further work required to complete the Work in more than one stage or operation.
- 4.6 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 in relation to any progress claim will be final and binding.
- 4.7 The Buyer must not deduct any sum from the amount due on any invoice or statement for any reason whatsoever.
- 4.8 Heat Treatment is entitled to payment notwithstanding any difficulties which the Buyer may have 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, Heat Treatment may charge the Buyer storage costs in relation to the Goods.
- 5.2 If Heat Treatment agrees to deliver the Goods will to an address to be specified by the Buyer (at least 2 working days prior to Heat Treatment's anticipated delivery date), then:-
- (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 kerbside 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. The Goods will then be at the risk of the Buyer and although Heat Treatment will take due care, it will not be liable for any loss, howsoever caused, in accordance with clause 11.1.
- 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 including loss of income or opportunity cost) 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) was performed strictly in accordance with the Contract;
  - (b) is not faulty; and
  - (c) complies with all relevant specifications and standards,
- and to the extent permitted by law, the Buyer shall waive any right (or alleged right) to reject the Goods or claim any remedy whatsoever (including damages) against Heat Treatment in relation to the Work, 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. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 The Buyer acknowledges that Heat Treatment has conceived and developed or is entitled to use the conceptual designs, specifications and associated rights and owns all Intellectual Property Rights in relation to the Work;
- 7.2 Heat Treatment shall be the legal and beneficial owner of all other Intellectual Property Rights created by Heat Treatment, the Buyer, or their employees, agents or assigns in relation to any modifications, additions, improvements, variations, adaptations and the like relating to the Work or Heat Treatment's Intellectual Property Rights, whether acting alone or in conjunction with any other party.
- 7.3 In the event that Heat Treatment creates or generates any Intellectual Property Rights in the provision of the Work (whether created by itself or jointly with or independently of any third party) or in the event that Heat Treatment generates or engages a third party to generate such rights in the supply of the Goods or the provision of the Services, then:
- (a) Heat Treatment shall be responsible for the engagement of any third party;
  - (b) The cost of engaging the third party shall be borne by the Buyer where noted in the Offer by Heat Treatment.
  - (c) Any Intellectual Property rights created or generated (including by a third party) shall vest in or shall be assigned to Heat Treatment and Heat Treatment shall be solely entitled to the benefit of such rights.
- 7.4 The Buyer will take all reasonable steps to promptly assign to Heat Treatment any Intellectual Property rights created or generated by it or any third party which are to vest in or be assigned to Heat Treatment pursuant to these Terms and Conditions.

7.5 The Buyer acknowledges and agrees that Heat Treatment shall be the legal and beneficial owner of any and all data, facts or statistics collected or gathered by Heat Treatment, or not as a result of or incidental to the provision of the Goods and Services and, without limitation, including all information and data relating to the use of the Goods or Services or any matters incidental thereto.

7.6 Should the Buyer (for any reason) be deemed to be the owner of or otherwise have any rights in relation to the data, facts or statistics referred to in the preceding paragraph, then it shall take all reasonable steps to promptly assign all such rights to Heat Treatment.

7.7 Heat Treatment shall be entitled to use, organise, collate or commercialise such data or any part, section or compilation of such data for any purpose which it deems fit.

7.8 Nothing contained in these terms and conditions shall oblige Heat Treatment to make any data obtained by it in relation to or incidental to the provision of the Goods and Services available to the Buyer.

7.9 In no circumstances may the Buyer reverse engineer, copy or reproduce any of Heat Treatment's Intellectual Property Rights or engage, encourage or be involved in any way with another entity which does so. The Buyer shall inform Heat Treatment immediately if it becomes aware of such matters.

## **8 CONFIDENTIALITY**

8.1 The Receiving Party must, and must cause any Representatives to whom it provides Confidential Information, to maintain the Confidential Information of the Disclosing Party in strict confidence and not discuss with, communicate, disclose or reveal any of the Confidential Information to any third party without the prior written consent of the Disclosing Party, provided however, that the Receiving Party may disclose such Confidential Information only to its Representatives on a need-to-know basis after taking reasonable precautions to ensure that such Representatives will maintain the Confidential Information in confidence. Such precautions may include ensuring that the Representatives have signed a written non-disclosure agreement that is consistent with this Agreement. The Receiving Party further agrees not to and must cause its Representatives not to use any such Confidential Information for its own account or benefit. Without limiting the above, the Receiving Party must, and must cause its Representatives to, take all necessary steps to keep the Confidential Information safe and under its control and to treat the Confidential Information with at least the same degree of care with which it treats and protects its own proprietary information of a like or similar nature, but not less than reasonable care.

8.2 The Receiving Party must not use or reproduce any Confidential Information for any purpose other than as permitted by the Disclosing Party or as otherwise set out in these Terms and Conditions.

8.3 The Receiving Party must immediately notify the Disclosing Party of any potential, suspected or actual breach of confidentiality.

## **9 NO PUBLICATION**

91. The terms of any Contract formed between the parties (including on the acceptance of any Offer for the provision of Work) shall remain confidential between the parties.
- 9.2 Despite any provision to the contrary, the Buyer acknowledges and consents to Heat Treatment informing third parties of the fact that it has provided Work to the Customer for the purposes of promoting Heat Treatment.
- 9.3 The Buyer further acknowledges and consents to Heat Treatment providing detail to third parties (by way of case study or other promotional or advertising material or publication) of the Work provided by Heat Treatment to the Buyer, provided that where Heat Treatment publishes any details of the Work provided to the Buyer, it may describe the business conducted by the Buyer, but shall ensure that it does not name the Buyer.
- 9.4 To the extent that they are not already the property of Heat Treatment, the Buyer grants to Heat Treatment an irrevocable perpetual licence to use in case studies, advertising or marketing material, all of Heat Treatment's work created pursuant to or in anticipation of any contract between the parties. The Buyer also grants to Heat Treatment a limited licence to use their trademarks, brand or logo for the purpose of such advertising or marketing materials.

## **10. Non-competition**

- 10.1 It is a fundamental term that the Buyer shall not appoint another party to supply Work or provide any similar or competing Goods or Services during any term of supply identified in the Offer or an Order.

## **11. Property and Risk**

- 11.1 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.
- 11.1 The Buyer is not insured under any policy of insurance held by Heat Treatment and accordingly cannot claim as an insured under any such policy. Rather, the Buyer should obtain its own insurance for the Goods whilst they are in the possession of Heat Treatment.
- 11.3 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.
- 11.4 The parties agree that, for the purposes of PPSA, these Terms and Conditions and any Contract for Work shall constitute a security agreement in the Goods to secure payment of the purchase price and all of the Buyer's outstanding debts and obligations to Heat Treatment from time to time and this Security Interest shall continue until all the Buyer's debts and obligations under these Terms and Conditions and the Contract have been discharged.
- 11.5 Heat Treatment will have a Purchase Money Security Interest (**PMSI**) in all Goods supplied in accordance with these Terms and Conditions and Heat Treatment's Security Interest shall extend to the Proceeds (including any Accounts) and Accessions.
- 11.6 The Buyer agrees to do all things necessary, including providing all relevant information necessary to register a Financing Statement or a Financing Change Statement as a Security Interest in the Buyer's personal property, (and, if applicable, a PMSI) on the Personal Property Securities Register (PPSR).
- 11.7 The Buyer will take all steps necessary to better secure any Collateral which secures or is

intended to secure the supply of Goods pursuant to the Terms and Conditions immediately and at the Buyer's own cost.

- 11.8 The Buyer must pay Heat Treatment's costs of any discharge or amendment of any Financing Statement or Financing Change Statement.
- 11.9 The Buyer agrees that Heat Treatment may take whatever action is appropriate to ensure that Heat Treatment has first ranking priority in the Collateral and will indemnify Heat Treatment for any costs.
- 11.10 The Buyer agrees that where Heat Treatment has any rights in addition to those conferred by Ch 4 of the PPSA, those rights continue to apply.
- 11.11 Within two (2) business days of Heat Treatment's written request the Buyer will provide to Heat Treatment copies of all documents granting Security Interests registered over its personal property and any Security Interests perfected by Possession or Control within the meaning of PPSA.
- 11.12 The Buyer authorises Heat Treatment (as your agent) to request any information under section 275 of the PPSA from any Secured Party relating to any Security Interest.
- 11.13 The Buyer will give Heat Treatment not less than 48 hours prior written notice of any proposed change in the Buyer's name, address, email address, facsimile number, ACN or ABN, company registration or any other details required for registration on the PPSR.
- 11.15 The Buyer acknowledges that the Goods are not intended, and shall not be used, for personal, household or domestic use.
- 11.16 The Buyer agrees that, to the maximum extent permitted by law, sections 130, 142 and 143 of PPSA will not apply to any Security Interest.
- 11.17 The Buyer agrees, to the maximum extent permitted by law, to waive the right to do any of the following and to contract out of those sections of the PPSA:
- (a) request a statement of account under section 132(4) if there is no disposal of the Goods;
  - (b) give notice objecting to Supplier's proposal to retain or dispose of any of the Goods under section 137;
  - (c) receive notice of removal of an Accession, refuse permission to remove an Accession, or such damages relating to the removal of an Accession;
  - (d) receive a verification statement or notice in relation to any Financing Statement or Financing Change Statement in respect to the Security Interest created pursuant to these terms and conditions;
  - (e) receive a notice from the Supplier under s118 , 121, 129 or 130;
  - (f) receive a notice from the Supplier of seizure of Goods under s123;
  - (g) receive a statement of account showing the amounts paid to the other secured parties after disposal of the Goods under s132; and
  - (h) receive a notice of retention of the Goods under ss134 and s135.

## 12. Warranties and Exclusions

- 12.1 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.
- 12.2 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.

- 12.3 To the extent permitted by law and save as provided in these Terms and Conditions, the Buyer hereby releases Heat Treatment from all liability and indemnifies Heat Treatment in respect of any claim, action or suit for loss or damage (including consequential loss) by reason of delay, faulty or defective materials or workmanship or any act of negligence or omission by Heat Treatment, its servants or agents 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.
- 12.4 Heat Treatment's liability for a breach of these Terms and Conditions, including for a breach of a condition or warranty implied by Pt 3-2 Div 1 or under section 274 of the Australian Consumer Law ("**ACL**"), is limited to:
- (a) In the case of Goods, any one or more of the following:
    - (i) the replacement of the Goods or the supply of equivalent Goods;
    - (ii) the repair of the Goods;
    - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
    - (iv) the payment of the cost of having the Goods repaired; or;
  - (b) In the case of Services:
    - (i) the supplying of the Services again; or
    - (ii) the payment of the cost of having the Services supplied again, whichever is the lesser, at Heat Treatment's sole discretion.
- 12.5 Save as provided in these Terms and Conditions, Heat Treatment excludes all warranties and guarantees in connection with the Works other than those which may not be excluded under the ACL or other relevant legislation. For the avoidance of doubt, this exclusion includes an exclusion of all conditions and warranties implied by custom, the general law or statute, for damages suffered by the Buyer arising in any way out of the supply, delay in supplying or failure to supply Goods.
- 12.6 The Buyer acknowledges that subject to the terms implied by law and not capable of exclusion:
- (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.
- 12.7 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, including 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.
- 12.8 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.
- 12.9 The ACL protects consumers by giving them certain rights relating to the purchase of goods and services. If you are a 'consumer' as the term is defined in the ACL:
- (a) the Goods and Services come with guarantees that cannot be excluded under the ACL;

- (b) you are entitled to rectification of the Work or refund for major failure and for compensation for other reasonably foreseeable loss or damage; and
- (c) you are entitled to rectification of the Work if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

- 12.10 Notwithstanding any other term, and to the extent permitted by law, if 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 one hundred (100)% 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 8.11 A Buyer is not entitled to make any claim upon Heat Treatment if any amounts are outstanding from the Buyer to Heat Treatment.
- 12.12 The Buyer acknowledges that it has read and understood all material issued to it by Heat Treatment in relation to the Work, including these Terms and Conditions, 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.
- 12.13 The parties acknowledge that these limitations and exclusions of liability are reasonable in the context of the relationship taken as a whole.

### **13. Default**

- 13.1 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.
- 13.2 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.
- 13.3 The Buyer must pay all expenses incurred by Heat Treatment in collecting overdue moneys or otherwise enforcing a Contract on a full indemnity basis.
- 13.4 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.

### **14. General**

- 14.1 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.
- 14.2 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 ACL in relation to particular circumstances is not void in relation to other circumstances.

- 14.3 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.
- 14.4 No waiver of a provision of any Contract is a further or continuing waiver of the term or provision.
- 14.5 As far as the obligations of the Buyer are concerned, time is of the essence.
- 14.6 Where the Buyer consists of more than one legal person, they will be jointly and severally liable to Heat Treatment on all accounts.
- 14.7 Where Heat Treatment's performance of a Contract is to be by instalments, then 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.
- 14.8 The parties agree to be bound by the law of the State of Queensland, irrespective of the place of delivery.
- 14.9 Any proceedings in relation to a Contract or these Terms and Conditions must be commenced in the relevant Court in Brisbane.
- 14.10 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.
- 14.11 Headings are for convenience only and do not affect the construction of clauses.
- 14.12 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.
- 14.13 If for any reason beyond Heat Treatment's control, Heat Treatment's performance of a Contract is delayed, Heat Treatment may cease or suspend the Work. The Buyer shall pay an invoice rendered by Heat Treatment and all charges and expenses incurred by Heat Treatment in undertaking the Work.
- 14.14 Heat Treatment will handle any information which is received from the Buyer in accordance with its privacy policy, which may be obtained from The Manager, Heat Treatment Australia, PO Box 361, Acacia Ridge Qld 4110.