

MASTER SERVICES AGREEMENT TERMS AND CONDITIONS

THESE MASTER SERVICES AGREEMENT TERMS AND CONDITIONS are applicable to and are expressly incorporated by reference into all LONE STAR HEAT TREATING CORPORATION MASTER SERVICE AGREEMENTS and provide the full terms of the Parties' Agreement with respect to the provision of heat treating and related metallurgical services by Lone Star Heat Treating Corporation ("COMPANY").

1. DEFINITIONS:

- 1.1. *Definitions:* Defined terms shall be represented in this Agreement in capitalized initial letter form. The meaning of the defined terms is expressed below:
- (a) "*Affiliate*" of a particular entity shall mean a company which owns more than fifty percent (50%) of the capital stock of such entity, a company in which such entity owns more than fifty percent (50%) of the stock, or a company in which more than fifty percent (50%) of the stock is owned by the same company that owns more than fifty percent (50%) of the stock of such entity. Ownership for the purposes of this definition includes direct and indirect ownership.
 - (b) "*COMPANY*" shall mean LONE STAR HEAT TREATING CORPORATION.
 - (c) "*COMPANY GROUP*" shall mean individually and collectively COMPANY, COMPANY's co-venturers, partners, other contractors and its and all their parents, subsidiaries, and affiliated companies and its and all of their respective officers, directors, employees, agents, assigns, representatives, subcontractors of COMPANY and the subrogees of said parties.
 - (d) "*CUSTOMER*" shall mean the entity defined as CUSTOMER in any LONE STAR HEAT TREATING CORPORATION SERVICE AGREEMENT.
 - (e) "*CUSTOMER GROUP*" shall mean individually and collectively CUSTOMER and its parent, subsidiary and affiliate-companies and the subrogees of said parties.
 - (f) "*Day*" shall mean a period of twenty-four (24) hours, beginning upon delivery of materials or as otherwise provided in the Work Order.
 - (g) "*Effective Date*" shall mean the date referenced in the preamble above and upon which this Agreement shall be effective, and the Parties shall be bound.
 - (h) "*Party*" shall mean singularly, COMPANY or CUSTOMER, and collectively, "Parties" shall mean COMPANY and CUSTOMER.
 - (i) "*Subcontractor*" shall mean any company or entity with whom COMPANY enters into an agreement to perform any or the Work or to whom COMPANY otherwise delegates performance of any of the Work, including any of COMPANY's Affiliates with when it enters into such an agreement or to whom it otherwise delegates any of the Work.
 - (j) "*Term*" shall mean, as applicable, the time designated as the term of this Agreement in Section 3.1 hereof, or the same period designated for the Work in the applicable Work Order.
 - (k) "*Work*" shall mean the provision of heat treating and related metallurgical services, work, jobs, other services, goods, deliverables, duties, and activities to be performed by COMPANY for CUSTOMER as specified in any executed Work Order, including all necessary ancillary equipment, personnel, and tools of trade to affect such work, jobs, services, goods, deliverables, duties, and activities.
 - (l) "*Work Order*" shall mean any written order by CUSTOMER to COMPANY for Work.

1.2. *Interpretations:* In the event of a conflict between the Agreement and a Work Order, the Agreement shall control for all matters relating to audit, choice of law, confidentiality, dispute resolution and indemnity. In the event of any other conflict, the Work Order shall control.

2. SCOPE OF SERVICES:

2.1. *COMPANY'S Work.* This Agreement shall control and govern all Work undertaken by COMPANY, including under any Work Orders, and shall define the rights, obligations and liabilities of COMPANY and CUSTOMER, including the LIMITATIONS OF LIABILITY contained in Section 7 herein.

2.2. *Work Order.* During the Term, CUSTOMER may require COMPANY to provide Work by issuing to COMPANY a Work Order upon signature by both CUSTOMER and the COMPANY.

2.3. *Changes.* CUSTOMERS may, at any time, order changes in the Work. Such changes shall be in writing, agreed to by the COMPANY, and may include additions, omissions, alterations, or replacements.

3. TERM OF AGREEMENT AND TERM OF WORK ORDERS:

3.1. *Term of Agreement.* This Agreement shall remain in full force and effect from its Effective Date until terminated by mutual agreement of the Parties. Notwithstanding the above, with respect to any Work Order, this Agreement shall remain in full force and effect until the Work Order is completed or terminated under Section 3.2.

3.2. *Term of Work Orders.* Each Work Order will specify the duration of its subject Work.

3.3. *Survival Beyond Termination.* Notwithstanding the provisions of Section 12, all provisions relating to audit, choice of law, confidentiality, dispute resolution, indemnity, insurance, title, and warranty shall survive any termination of this Agreement.

3.4. *Title to Materials Upon Completion.* Upon termination of this Agreement or any Work Order, and upon completion of the Work, title to, possession of and all risks of loss of all Work and useable materials, usable supplies, equipment, permits, drawings, data, specifications, warranties, bills of lading, supplier's receipts and all other similar items used in or for incorporation into the Work shall immediately thereon pass to and vest in CUSTOMER, unless such title has already passed to CUSTOMER. If requested by the COMPANY, the CUSTOMER agrees to execute documentation reasonably needed to confirm the transfer of legal title to CUSTOMER.

4. CONSIDERATION:

4.1. COMPANY shall be compensated for its Work under this Agreement and Work Orders by CUSTOMER in accordance with the payment provisions stated herein and in accordance with the compensation provisions set for the in the applicable Work Order.

4.2. COMPANY and CUSTOMER hereby agree and affirm each enters into this Agreement and Work Orders in consideration of the premises and mutual covenants exchanged herein and for other good and valuable consideration, including the Work performed by COMPANY, the sufficiency and adequacy of which are hereby acknowledged.

S. PAYMENT:

5.1. *Time of Payment.* CUSTOMER shall make payment of the undisputed amount of all invoices under this Agreement within thirty (30) Days following receipt of each invoice from COMPANY.

5.2. *Place of Invoice Presentation and Payment.* Invoices shall be presented to CUSTOMER upon completion of the Work. Invoices shall contain sufficient detail to support all charges, including names,

locations, dates, and times. Invoices shall include a reference to the Agreement and Work Order numbers. Unless otherwise agreed, payment of COMPANY's invoices shall be made by wire transfer to CUSTOMER's bank account specified on Appendix B or such other place as may be designated in writing by COMPANY. Any applicable consumption tax, sales tax or value added tax ("VAT"), shall be reimbursed to the COMPANY by a CUSTOMER and shall be separately stated on COMPANY's invoices.

6. LIMITATION OF LIABILITY:

6.1. All Work will be performed by COMPANY subject to the following LIMITATION OF LIABILITY:

(a) **THE CUSTOMER UNDERSTANDS THAT EVEN AFTER EMPLOYING ALL THE SCIENTIFIC METHODS KNOWN TO COMPANY, HAZARDS STILL REMAIN IN METAL TREATING. CUSTOMER THEREFORE AGREES THAT COMPANY'S LIABILITY SHALL NOT EXCEED TWO (2) TIMES THE AMOUNT OF THE CHARGES FOR THE WORK DONE ON ANY MATERIAL. THE REIMBURSEMENT AND FULL LIABILITY OF COMPANY SHALL NOT EXCEED TWICE THE AMOUNT OF THE CHARGES FOR THE WORK DONE BY COMPANY ON ANY MATERIAL. THIS IS INTENDED TO REIMBURSE CUSTOMER FOR THE CHARGES AND TO FULLY COMPENSATE CUSTOMER IN THE AMOUNT OF THE CHARGES. THIS TERM APPLIES TO ALL WORK DONE BY COMPANY EXCEPT WHERE OTHERWISE AGREED IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF COMPANY.**

(b) **CUSTOMER AGREES TO ACCEPT THE LIMITS OF LIABILITY AS EXPRESSED IN THIS STATEMENT TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES OR PROVISIONS AS TO LIABILITY THAT MAY BE SET FORTH IN CUSTOMER'S OWN INVOICES, PURCHASE ORDERS OR OTHER DOCUMENTS. IF CUSTOMER PROPOSES A DIFFERENT OR ADDITIONAL LIABILITY PROVISION, THE SAME MUST BE AGREED TO IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY BEFORE WORK UNDERTAKEN OR SERVICES ARE PROVIDED. IN SUCH EVENT, CUSTOMER UNDERSTANDS THAT A DIFFERENT CHARGE FOR SERVICES MUST BE AGREED REFLECTING THE HEIGHTENED RISK TO COMPANY AND THAT NO WORK WILL BE COMMENCED UNTIL BOTH CUSTOMER AND COMPANY HAVE SIGNED AN AGREEMENT SETTING FORTH TI- IENNEW CHARGES AND TERMS OF LIABILITY.**

(c) **IT IS AGREED BY CUSTOMER THAT THE INABILITY TO DISCOVER A DEFECT WITHIN A COMMERCIALY REASONABLE TIME AFTER THE RECEIPT OF TREATED MATERIALS, NOT TO EXCEED FIVE (5) BUSINESS DAYS, WILL NOT VOID THE LIMITATION OF LIABILITY CONTAINED WITHIN THIS AGREEMENT. IT IS CUSTOMER'S OBLIGATION TO NOTIFY COMPANY IF IT DOES NOT AGREE TO THE LIMITATION OF LIABILITY CONTAINED HEREIN AND A FAILURE ON THE PART OF CUSTOMER TO DO SO IN WRITING THEFORE WORK IS COMMENCED WILL BE DEEMED ACCEPTANCE OF THIS LIMITATION OF LIABILITY.**

(d) **COMPANY'S LIABILITY TO CUSTOMER, IF ANY, SHALL CEASE ONCE ANY FURTHER PROCESSING, ASSEMBLING OR ANY OTHER WORK HAS BEEN UNDERTAKEN BY CUSTOMER OR ANY THIRD PARTY.**

6.2. Consequential Damages. CUSTOMER further agrees COMPANY will not be liable in contract, warranty, tort or strict liability for any special, indirect or consequential damages arising from any reasons whatsoever, including but not limited to personal injury, death, property damage, loss of profits, loss of production, business interruption, recall or any other losses, expenses or liabilities allegedly occasioned by the Work or services performed under this Agreement or Work Order on the part of COMPANY.

7. DISCLAIMER OF WARRANTIES:

7.1. CUSTOMER AGREES AND ACCEPTS THAT COMPANY MAKES NO EXPRESS OR IMPLIED WARRANTIES, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTY OF MERCHANTABILITY, AS TO THE PERFORMANCE OR CAPABILITIES OF THE TREATED MATERIALS OR THE SERVICES PROVIDED. THE AFOREMENTIONED LIMITATION OF LIABILITY STATED IN SECTION 6 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 COMPANY.

8. INDEMNIFICATION:

8.1. CUSTOMER SHALL BE LIABLE FOR AND AGREES TO RELEASE, DEFEND, PROTECT, INDEMNIFY AND HOLD HARMLESS COMPANY FROM AND AGAINST ANY AND ALL LOSSES, DEMANDS, CLAIMS, SUITS, JUDGMENTS, AWARDS OR DAMAGES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING FROM, RELATING TO OR IN CONNECTION WITH THE WORK PERFORMED BY COMPANY UNDER THIS AGREEMENT, REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY COMPANY'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE), OR UNDER ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING IN TORT, CONTRACT, WARRANTY OR STRICT LIABILITY.

9. ADDITIONAL INSURED STATUS AND WAIVER OF SUBROGATION:

9.1. *Additional Insured Status.* CUSTOMER agrees to and shall, at its own cost and expense, procure and maintain during the Term of this Agreement the policy(ies) of insurance and in the specified minimum amount(s) as listed below with reliable insurance company(ies) reasonably acceptable to COMPANY and authorized to do business within the state or area contemplated under this Agreement. Before commencing or undertaking any Work, CUSTOMER shall provide COMPANY with a Certificate of Insurance, signed by authorized representative(s) of the insurance company(ies) providing the coverage, evidencing that the insurance coverages, extensions and limits required in this Agreement are in place and shall not be cancelled or materially changed without at least thirty (30) days written notice to COMPANY. Upon request, COMPANY shall have the right to examine or inspect the originals or certified copies of such policy(ies). In the event CUSTOMER fails to furnish COMPANY with an acceptable Certificate of Insurance, COMPANY shall have the right to refuse to undertake or terminate the Work without any penalty whatsoever to COMPANY. In the event CUSTOMER fails to furnish the minimum insurance coverages, extensions and limits required in this Agreement, COMPANY may purchase insurance necessary to provide such minimum coverage and charge the premiums to CUSTOMER's account. The failure to place the required insurance coverages, extensions and limits or failure to comply fully with any of the insurance requirements within this Agreement shall in no way relieve CUSTOMER of its obligations pursuant to this Agreement.

9.2. *INSURANCE COVERAGES.* The insurance coverages, extensions and limits specified herein are minimum requirements and shall not limit in any way the liability of CUSTOMER or COMPANY under such coverages, extensions and limits. To protect COMPANY against liability, loss or expense arising from damage to property or personal injury to a person arising out of, in connection with or resulting from the Work provided hereunder, CUSTOMER shall carry the following minimum insurance coverages:

- (a) Comprehensive General Liability Insurance with a minimum limit of \$1,000,000.00 each occurrence for bodily injury, premises and operations, advertising injury, products and completed operations, independent contractors and broad form property damage included completed operations. Such insurance shall specifically cover the contractual liabilities assumed by CUSTOMER in this Agreement.**

- (b) Umbrella/Excess Liability Insurance written on an occurrence basis with no claims made features with the minimum combined single limit of \$5,000,000.00 each occurrence/aggregate where applicable to the excess the coverages and limits required in subsection (a) immediately above.

9.3. *Waiver of Subrogation.* In respect of liabilities assumed under this Agreement, CUSTOMER agrees that the insurance coverages, extensions and limits it provides as required by Section 9.2 above shall be endorsed to name COMPANY as an additional assured (with the exception of workers' compensation and employer's liability) and to provide that all underwriters will have no right of recovery or subrogation against COMPANY and that CUSTOMER'S insurance shall be primarily liable for any and all losses covered by the described policy(ies) without regard to and without any right of contribution from any insurance maintained by COMPANY and that all deductibles and/or self-insured retentions shall be assumed by and for CUSTOMER's account.

10. CHOICE OF LAW, VENUE AND ATTORNEYS' FEES:

10.1 The laws of the State of Texas shall control the validity, construction interpretation of this Agreement and Work Orders excluding any conflicts of laws principles which would direct the substantive law of another jurisdiction to apply.

10.2. Any disputes or claims arising under, in connection with or related to this Agreement or the Work or services undertaken this Agreement, or any Work Order shall be commenced in the state courts for Harris County, Texas, and each of the Parties consents and submits to the jurisdiction of such state Courts. The Parties agree that a summons and complaint or petition commencing an action or proceeding in such courts shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it at its address designated pursuant hereto or as otherwise provided under the laws of the State of Texas. The parties waive any claim that Harris County, Texas is an inconvenient forum and any such claim or that such court lacks proper venue or jurisdiction.

10.3. In any dispute between the Parties arising under, in connection with or related to this Agreement or the Work or services undertaken this Agreement or any Work Order, the prevailing party shall be entitled to reasonable attorneys' fees and other reasonable costs of litigation in addition to all other remedies.

11. FORCE MAJEURE:

11.1. Any delays in or failures of performance by either Party shall not constitute default hereunder or give rise to any claims for damages, if and to the extent such delays or failures of performance are caused by occurrences of *Force Majeure*, including but not limited to, acts of God, war, official strikes or industrial disputes beyond the reasonable control of the Parties and which cannot be overcome by the exercise of ordinary diligence, quarantine, epidemic, blockade, civil disturbance, riots, insurrection, fire, delays, action or inaction by a governmental agency, rules or regulations of any governmental authority having or claiming jurisdiction, compliance with which makes continuance of operations impossible. The Party experiencing *Force Majeure* shall notify the other Party with reasonable promptness of the existence of any such *Force Majeure* and the probable duration thereof and shall provide the other Party from time to time with correct information concerning same. The Party experiencing *Force Majeure* shall take all reasonable actions to remove the cause of *Force Majeure*.

12. TERMINATION:

12.1. Either Party may terminate a Work Order for convenience upon thirty (30) days notice to the other Party. Upon such termination COMPANY shall cease providing the Work or services and shall have no further obligation to CUSTOMER other than allowing CUSTOMER to access and remove any of CUSTOMER'S materials within a commercially reasonable time, and CUSTOMER shall have no further obligation to COMPANY except for payment for unpaid sums due to COMPANY under this Agreement or Work Order and accrued to the date of termination of this Agreement.

- 12.2. This Agreement may be terminated by either party if the other party has breached a covenant, obligation, representation or warranty under this Agreement and such breach remains uncured for a period of 30 days after written notice from the party seeking the termination.

13. GENERAL PROVISIONS:

- 13.1 *Entire Agreement.* This Agreement and any Work Order executed pursuant thereto is the entire agreement between the Parties as it relates to the Work under the Work Order and supersedes all prior agreements, promises, correspondence, discussions, representations, and understandings, except those expressly set forth herein. No other agreements, promises, correspondence, discussions, representations, or understandings, either express or implied, unless expressly set forth herein, are binding between the Parties.
- 13.2 *Confidentiality.* CUSTOMER shall keep confidential and shall not publish or disclose to any third party any information, photographs, data or process, drawings or specifications connected with the business of COMPANY or of any of its Clients or Customers which shall come or have come into their possession or to their knowledge in or by reason of the performance of the Work without the prior written agreement of COMPANY. CUSTOMER agrees, if required by COMPANY, to sign an appropriate form of secrecy. The obligations under this Clause shall continue for a period of three (3) years following the completion of performance of this Agreement or the termination of this Agreement for any reason. This Agreement does not constitute a transfer of any ownership interest in the Confidential Information to CUSTOMER nor a license under any of COMPANY's present or future patent rights. Disclosure of such Confidential information shall be at the sole and exclusive option of COMPANY. Except as set out in that certain License Agreement between the Parties, within ten (10) days after COMPANY'S written request, CUSTOMER agrees to return or certify the destruction of all written including designs, specifications, schedules, reports, notes and samples which were received by CUSTOMER from COMPANY and all copies, analyses and drawings based thereon. The obligations of this Agreement as to confidentiality and non-disclosure shall not apply to the extent that the Confidential Information disclosed by COMPANY was known to CUSTOMER or becomes available to the public through no fault of CUSTOMER. Confidential information disclosed by COMPANY shall not be deemed to be available to the public nor to be in CUSTOMER'S possession merely because the specific Confidential information is generally included within broader information available to the public or in CUSTOMER's possession unless such Confidential information is or can be separately segregated.
- 13.3 *Severability.* If, in any legal proceeding, it is determined that any provision of this Agreement is unenforceable under applicable law, the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of this Agreement and the Agreement shall be construed and enforced as if such provision had not been included.
- 13.4 *Headings.* The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- 13.5 *Assignment and Subcontracting.* Neither Party shall assign, transfer or sublet this Agreement or any Work Order executed pursuant hereto or any of the obligations, benefits or interests contained or created thereby in any manner whatsoever, without the prior written consent of the other Party. This Agreement shall be binding upon the successors, assigns and the successive assigns of the Parties hereto.
- 13.6 *Third Parties.* Except as expressly provided for elsewhere in this Agreement, this Agreement shall not be construed to confer any benefit on any third party not a Party to this Agreement nor shall it provide any rights to such third party to enforce its provisions.
- 13.7 *Counterparts.* This Agreement may be executed in counterparts and shall be effective when all parties shall have signed a copy of this Agreement. A copy of this Agreement bearing an original signature for each party shall constitute the complete Agreement. It is agreed by the Parties that facsimile signature pages signed by the parties shall be binding to the same extent as original signature pages.

13.8. Amendments and Waivers. No amendment of any provision of this Agreement or Work Orders shall be valid unless the same shall be in writing and signed by COMPANY and CUSTOMER. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

13.9. Notices. All notices or other correspondence shall be in writing and shall be considered as having been given to each Party (a) if given by facsimile, at the time the facsimile is transmitted to the following facsimile numbers and the appropriate answer back is received or receipt is otherwise confirmed; (b) if given by mail, three (3) business days after being mailed by registered or certified mail, postage prepaid, to the following addresses; or (c) if given by any other means (including but not limited to overnight delivery), when delivered at the following addresses:

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____