



## Terms and Conditions for the Provision of Services

### 1. Interpretation

In these Conditions:

a) Definitions:

**“Acknowledgement”** means the written acknowledgement of an Order given by the Company to the Customer;

**“Company”** means the relevant subsidiary company of WHT Holdings Ltd., a company registered in England and Wales with company number 06088612 and whose registered office is at Wallwork Offices, 69 Hacking, Street, Bury, Lancashire, BL9 0RG with whom the Customer contracts, which for the time being includes Wallwork Heat Treatment Ltd. (Co. No. 640305); Wallwork Heat Treatment (Birmingham) Ltd (Co. No. 2293573); Wallwork Cambridge Ltd. (Co. No. 1476898), Wallwork Newcastle Ltd. (Co. No. 1576003, all registered in England and Wales with their registered office being Wallwork Offices, 69 Hacking Street, Bury, Lancashire, BL9 0RG;

**“Customer”** means the person, firm, company or legal entity with whom the Company enters into the Contract;

**“Contract”** means the contract (including the Quotation and Acknowledgment (where applicable)) between the Company and the Customer for the Processing of Goods in accordance with these Conditions;

**“Estimate”** means the oral or written estimate given by the Company to the Customer;

**“Goods”** means the Customer's goods described in the Order and subsequently supplied by the Customer to the Company for Processing;

**“Intellectual Property Rights”** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“Mechanical Testing Services”** means a range of standardised tests carried out by the Company on any material provided by the Customer for the specific purpose of determining the mechanical properties of that material;

**“Order”** means the Customer's order, purchase order or related documents for Processing as set out in the Customer's written acceptance of the Quotation or in circumstances where a Quotation is not provided, a Customer's Order for any Processing;

**“Party”** and **“Parties”** refer to the Company and the Customer, each a Party and together the Parties;

**“Premises”** means the Company’s premises or place of business as shall be specified on the Quotation, Order or Acknowledgment;

**“Processing”** means the services, (including heat treatment, coating, brazing, hot isostatic pressing (HIP) or any associated processing linked to HIP, Mechanical Testing Services and any other service offered by the Company from time to time) supplied by the Company to the Customer. The words ‘Process’ and ‘Processes’ shall be construed accordingly;

**“Processed Goods”** means Goods after Processing;

**“Quotation”** means the written quotation given by the Company to the Customer for providing the Processing;

**“Writing”** and **“Written”** shall include e-mail transmission.

- b) Words and phrases defined for the purposes of or in connection with any statutory provision shall where the context so requires be construed as having the same meaning in these Conditions and any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- c) Unless the context otherwise requires reference to a Condition shall be construed as a reference to a condition of these Conditions and reference to clause or sub-clause shall be construed as reference to a clause or sub-clause of a Condition.
- d) The headings and numbers in these Conditions are for ease of reference only and do not form part of the Conditions for the purposes of construction.
- e) These Conditions shall supersede all previous terms and conditions existing between the Company and the Customer.

**“Working Day(s)”** means a day (other than a Saturday or Sunday) on which banks are generally open for normal business in the City of London.

## **2. Formation of Contract**

- 2.1. The Contract is between the Company and Customer as principals and shall not be assignable by the Customer.
- 2.2. The Contract and its subject matter are confidential and shall not be disclosed to any third party or used for any other purposes.
- 2.3. Specifications, descriptions and illustrations contained in the Company’s catalogues, brochures or other advertising materials (in whatever form including on any website) are intended to give only a general indication of the Processes concerned and the possible result of any Processing and no such specifications, descriptions or illustrations shall form any part of the Contract or form any warranty or representation by the Company.
- 2.4. The Contract shall be in writing and shall be deemed to include these Conditions (subject to the provisions of clause 2.14).
- 2.5. The Order constitutes an offer by the Customer to purchase the Processing of its Goods by the Company in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate. For the avoidance of doubt, any Orders by the Customer shall be deemed to include these Conditions to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 2.6. The Customer warrants that the Goods are the absolute property of the Customer and are not subject to any option, right to acquire, assignment, mortgage, charge, lien or otherwise or the subject of any factoring arrangement, hire purchase, conditional sale or credit sale agreement.
- 2.7. After examination of samples of the Goods or upon receipt of the Goods, the Company has the right to amend any Quotation or decline to accept the Goods for Processing or to cancel any contract without liability to the Customer.
- 2.8. Where a Quotation is not requested or supplied, the price charged for the Processing shall be the price ruling at the date of completion of the Processing. The Company's ruling prices may be inspected at the premises of the Company. For the avoidance of doubt, the Company's ruling prices shall include a minimum price chargeable in any circumstances.
- 2.9. The Company where possible may notify the Customer of any necessary changes to the specification, materials or finishes used in the Processing to conform to any applicable safety or statutory requirements but is not bound to do so.
- 2.10. Where the Quotation or Acknowledgement contains documents and particulars in whatever form (including electronic) produced by the Company including (without prejudice to the generality of the foregoing) illustrations, designs, drawings, weight and technical specifications and ratings such documents and particulars shall be deemed to be approximate only. They shall not form part of the Contract or have any contractual force.
- 2.11. The Customer undertakes to comply with the provisions of clause 11 and to observe strict secrecy with such documents and particulars and not to disclose them to any third parties and the Company reserves all rights to copyright, design rights and all other intellectual or industrial property rights therein including the ownership of the actual documents submitted.
- 2.12. The Company may by giving notice to the Customer at any time up to receipt of the Goods by the Company for Processing increase any price quoted to reflect any increase in the costs of Processing which are due to an increase in the cost of labour, materials, manufacturing and transport costs or the imposition, introduction or increase of levies or taxes to which the Company is subject.
- 2.13. Cancellation of the Contract by the Customer will be a breach of contract entitling the Company to compensation and the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses paid, incurred or sustained by the Company as a result of the cancellation.
- 2.14. The Customer shall be taken to have accepted these terms by providing any Goods to the Company for Processing or by accepting physical delivery of any of the Processed Goods from the Company.
- 2.15. No variation to these Conditions shall be effective unless made in writing and signed by a director of the Company.
- 2.16. The Company and the Customer acknowledge that these Conditions have been given due consideration and that they are considered fair and reasonable by the Company and the Customer.
- 2.17. The Company may in its absolute discretion determine the location of any Processing and the Customer consents to the Company transporting any Goods to a site of its choice to carry out the Processing.
- 2.18. Goods supplied to the Company which are identified as requiring additional inspection upon receipt will be quarantined. The Customer will be contacted regarding either returning of the Goods or the Company carrying out inspection for an agreed additional charge.

- 2.19. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **3. Prices and Payment**

- 3.1. Unless otherwise stated, all prices provided in the Quotation are the price of the Processing in pounds sterling exclusive of VAT and do not include collection, delivery, packaging or insurance of the goods. The Customer shall be responsible for any additional costs arising from variation of quantity, part deliveries or express dispatch.
- 3.2. Each invoice shall be paid without any deduction by way of set-off, counterclaim or otherwise and received by the Company:
- 3.2.1. in full before receipt of the Processed Goods unless a credit account has been set up by the Company for the Customer and in such case in accordance with the agreed terms of the credit account; or
- 3.2.2. in full and in cleared funds at the earlier of within thirty days of the end of the calendar month in which the Company's invoice is issued; or
- 3.2.3. if a date or dates for payment are specified on the Quotation or Acknowledgement on the dates specified ("the Due Date").

The time of payment of each invoice shall be of the essence to the Contract.

- 3.3. The Company shall invoice the Customer after completion of the Processing of part of the Goods payment of such part of the price as relates to the completed part of the Processing shall become due and payable notwithstanding that the remainder of the Processing shall not have been completed.
- 3.4. The Customer will pay to the Company all additional costs, charges and expenses which the Company incurs or sustains in respect of, or otherwise connected with, the variation, delay or suspension of the Contract arising from an act or omission of the Customer or any employee, agent or contractor of the Customer, or by reason of any other circumstances for which the Company is not wholly responsible.
- 3.5. The Customer shall reimburse the Company for any tariffs or taxes paid by the Company in connection with the import or export of the Goods to and from the United Kingdom.
- 3.6. The Company shall be entitled to apply as it thinks fit any payment received from the Customer to any debt outstanding in respect of any contract between the Company and the Customer notwithstanding any purported appropriation by the Customer to the contrary.

### **4. Interest**

- 4.1. In default of payment of an outstanding invoice being made by the due date, the Company may charge interest at the rate of 8% per annum above the base rate from time to time of Barclays Bank plc on any overdue amount from the day following the Due Date until the date of receipt of cleared funds.

### **5. Transportation**

- 5.1. When accepting the Quotation or Acknowledgement the Customer shall submit to the Company all information, specifications, drawings and technical descriptions ("the Information") necessary to enable the Company to provide the Processing and the Customer alone shall be responsible for the accuracy and completeness of such Information and their suitability to the Goods. The Company reserves the right not to commence Processing until it shall be in receipt of such Information which it shall deem necessary for such purpose.

- 5.2. Unless otherwise stated in the Quotation or Acknowledgement the Customer shall deliver the Goods to the Premises at which the Processing is to take place on the date and time notified by the Company to the Customer for such purpose and shall be solely responsible for the costs and risks thereof.
- 5.3. If the Quotation or Acknowledgment includes transportation of the Goods to and from the Premises, then the Company will arrange transport by whatever method it considers appropriate (including the use of a third party carrier if it so wishes).
- 5.4. The Customer shall be responsible for the suitable packing of the Goods prior to delivery to the Company for Processing having regard to their manufacturing tolerances, quality and value to the Customer in materials which can be reused where appropriate by the Company for delivery of Processed Goods. Where such materials are not reusable or in the opinion of the Company deemed inadequate for packing Processed Goods the Company will pack Processed Goods as it deems appropriate and any additional costs so incurred shall be charged to the Customer. The Company does not accept responsibility for the return of packing materials after the Processing nor the suitability of any packing for the protection of the Goods.

## **6. Title and Risk**

- 6.1. Unless the Contract expressly states the contrary, risk of damage or loss to Goods and the Processed Goods shall at all times (including whilst they are at the Premises and during transportation to and from the Premises) remain at the insurance cover in respect thereto. Without prejudice to the generality of the foregoing, the Customer shall insure the Goods and Processed Goods in transit irrespective of the means of transportation used.
- 6.2. On delivery of any Goods to the Company, the Customer grants the Company a lien over all such Goods as security against any payment due to the Company from the Customer and shall upon request grant such other security over the Goods to the Company as the Company may from time to time require. The Company may retain all Goods delivered to it until all sums due and owing to it by the Customer have been paid.
- 6.3. It is the Customer's responsibility to decide whether or not the Company's limits of liability as set out in clause 13 below are acceptable and to inform the company in writing if they are not before submitting the Goods for Processing. On written request by the Customer to the Company the Company will seek to obtain a quotation for insurance cover for increased liability for the Goods. The Customer will be responsible for the payment of all premiums and costs involved in effecting such insurance and the Company will not proceed with any Processing until the insurance policy is in place and all premiums are paid.
- 6.4. The Customer is responsible in all cases for loading and unloading the Goods and Processed Goods from the delivery vehicle save for at the Company's premises and shall be responsible for all loss of or damage to the Goods and Processed Goods during the course of loading and unloading.
- 6.5. Subject to clause 12, where a third party courier is utilised by the Company to dispatch the Goods to the Customer, the Company's liability for damage to any Goods shall be limited to the extent of the value of the Processing services relating to the affected Goods.

## **7. Delivery**

- 7.1. Any dates given in the Quotation, Acknowledgment or otherwise by the Company for when the Processed Goods will be available for collection shall be estimates only and shall not constitute essential terms of the Contract. Any delay in completing the Processing shall not constitute a breach of contract entitling the Customer to terminate.
- 7.2. Delivery of the Processed Goods shall be made by the Customer collecting the Processed Goods at the Premises or, if some other place for delivery is agreed by the Company, by the Company dispatching the Processed Goods to that place.

- 7.3. The Customer shall, unless the Company is to arrange delivery of the Goods to the Customer's premises, collect the Goods from the Premises within 20 Working Days of the Company notifying the Customer that the Goods are available for collection.
- 7.4. In any case where the Company has agreed in writing to both a guaranteed delivery date and an agreed daily sum by way of pre-estimated damages for failure to deliver in accordance with the Contract, the Company's liability shall be limited to the agreed daily sum. In any other case the extent of the Company's liability shall be as stated in clause 12.
- 7.5. Where the Processed Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 7.6. If the Customer fails to take delivery of the Processed Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company, the Company may:
- 7.6.1. store the Processed Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 7.6.2. sell the Processed Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.
- 7.7. Where the Contract expressly states that the Company bears the risk of damage or loss to the Processed Goods and provides for delivery of the Processed Goods elsewhere than at the Premises the Company will consider a claim by the Customer in respect of loss or damage in transit only if the Customer:
- 7.7.1. gives written notice to the Company within twenty one days after the date of the Company's advice note or other notification of the dispatch of the Processed Goods in the case of non-delivery, or within seven Working Days of the delivery of the Processed Goods in any other case; and
- 7.7.2. where the Processed Goods are transported by an independent freight carrier complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit; and
- 7.7.3. is unable to make a claim for the loss or damage to its insurance company and all requirements of the insurance of the Goods whilst in transit have been fully complied with.
- 7.8. Subject to the provisions of clause 7.6 the Company shall have a general lien on all Processed Goods and property belonging to the Customer and such lien shall be exercisable in respect of all sums lawfully due from the Customer to the Company. The Company shall be entitled on the expiration of fourteen days' notice to dispose of such Processed Goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards such debt.
- 7.9. The Company may store all or any part of the Processed Goods at locations other than the Premises.

## **8. Cancellation and Suspension of the Contract**

- 8.1. This Condition applies if:

- 8.1.1. any sum which is due and payable by the Customer to the Company whether under the Contract or otherwise remains unpaid for a period of seven days; or
  - 8.1.2. the Customer fails to take delivery of any Processed Goods under any contract between the Customer and the Company otherwise than in accordance with the Customer's contractual rights; or
  - 8.1.3. the Customer fails to supply the Company with instructions for dispatch of the Processed Goods within seven days of notice being given to the Customer that the same are ready for dispatch; or
  - 8.1.4. unforeseen events including (without prejudice to the generality thereof) those referred to in clause 16 materially affect the commercial effect of the Contract; or
  - 8.1.5. the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
  - 8.1.6. an encumbrancer takes possession or a receiver, administrative receiver or administrator is appointed over any of the property or assets of the Customer; or
  - 8.1.7. the Customer ceases or threatens to cease to carry on business; or
  - 8.1.8. the Company reasonably apprehends that any of the events mentioned in paragraphs 8.1.5 to 8.1.7 is about to occur in relation to the Customer and notifies the Customer accordingly; or 8.1.9 in the reasonable opinion of the Company the credit rating of the Customer is reduced; or
  - 8.1.9. if the Company receives notice of any claim alleging that the Goods or any part thereof or any Processing applied to the Goods infringe any patent, copyright, design right, trademark or other industrial or intellectual property rights of any other person; or
  - 8.1.10. the Customer fails to provide any letter of credit, bill of exchange or other security required by the Contract.
- 8.2. If this Condition applies then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and, if the Processed Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **9. Sub-Contracting**

- 9.1. The Company reserves the right to sub-contract the fulfilment of the Contract or any part thereof in which event the Company contracts on behalf of itself and its sub-contractors.

## **10. Suitability for Processing**

- 10.1. It is the Customer's responsibility to ensure that the Goods are suitable for direct Processing, and must be received in a clean condition, free from contamination, foreign objects, and inserts that may harm customer's goods during processing, process stability and results. Any further work, processing, and preparation undertaken by the Company to make Customers goods fit to process will be charged additionally. All goods sent for HIP processing must arrive in a clean condition, please see Wallwork guide "Suitability for HIP processing".
- 10.2. It is the Customer's responsibility to ensure that the Goods are suitable for Processing, and the Customer represents and warrants that the Goods will not in any way damage or otherwise render inoperable the Company's equipment including without limitation HIP

vessels and associated equipment, furnaces, quench tanks, cleaning equipment, testing equipment, coating machines, induction hardeners, salt baths, nitride and plasma nitride equipment, jigs and fixtures ("Equipment").

- 10.3. The Customer agrees to defend, indemnify and hold the Company harmless from and against any loss, liability, demand, claim, action, damage, or injury caused to the Company's Equipment, Premises and employees as a result of the Customer's failure to comply with clause 10.1.

## **11. Duties and Responsibility**

- 11.1. The Company will carry out the Processing with reasonable skill and care. The employees of the Company are not authorised to make representations as to the quality or fitness for Processing of any Goods. If a representation is made or an opinion expressed orally which materially affects the Customer's decision to place an order for Processing, the Customer must ensure that such details are confirmed in writing by a director (or a duly authorised officer or employee) of the Company so as to form part of the Contract, otherwise no liability can be accepted.
- 11.2. HIP Processing will be provided on a basis of time, temperature and pressure as specified by the customer ("HIP Parameters"), and the Customer acknowledges and agrees that it will be accepted as correct Processing providing the HIP Parameters are maintained within the tolerances and no claim on the Company can be made for incorrect Processing.
- 11.3. Notwithstanding the HIP Parameters defined in Clause 11.2, HIP processing will contain a pre pressurisation run as part of the specification, i.e. it will be added to any specification issued by the customer for processing unless identified by the customer before processing starts and acknowledged by WHT.
- 11.4. The Company shall (subject to the provisions of clause 13.3) be under no liability:
- 11.4.1. in respect of any defect in the Goods;
  - 11.4.2. in respect of any defect in the Processed Goods arising from any information, drawing, design or specification supplied by or on behalf of the Customer;
  - 11.4.3. in respect of any defect in the Processed Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) or any use which was not in the reasonable contemplation of the Company at the time of Processing;
  - 11.4.4. in respect of any defects, deficiencies, non-conformities and damage which are due to late, incorrect, incomplete or inaccurate information or unsuited treatments prescribed by the Customer in the Order;
  - 11.4.5. in respect of any stains or other faults that were not visible prior to Processing;
  - 11.4.6. if the total price for the Processed Goods has not been paid by the Due Date; and
  - 11.4.7. the Customer shall be deemed to have accepted the Processed Goods and it shall be conclusively agreed that the Processed Goods are in accordance with the Contract unless;
    - a) within seven days after receipt of the Processed Goods and prior to their use or resale the Customer serves upon the Company a written notice specifying any defect in the quality or state of the Processed Goods or other respect in which the Processed Goods are not in accordance with the Contract which would be apparent upon careful inspection or by such testing as it is reasonable in all the circumstances for the Customer to undertake, or stating why the Processed Goods are not otherwise in accordance with the Contract and thereafter provides



to the Company a reasonable opportunity to inspect and test the Processed Goods before they have been used or resold; or

- b) if a defect in the quality or state of the Processed Goods or other respect in which the Processed Goods are not in accordance with the Contract would not be apparent upon careful inspection or reasonable testing the Customer serves upon the Company written notice of such defect or respect forthwith upon its discovery specifying the matters complained of and affording to the Company a reasonable opportunity of inspecting the Processed Goods before any making good or replacement is undertaken. The Customer shall not be excused from providing such opportunity by reason of the incorporation of the Processed Goods in the property of a third party or the location of the Processed Goods in, upon or under the premises or land of a third party.

- 11.5. No warranty is given by the Company that the Goods will retain their chemical, physical and other properties following Processing.
- 11.6. After the Processing the Company will normally test a small percentage of Processed Goods for conformity with the Customer's specification. Where the Contract provides for testing or inspection of the Processed Goods by or on behalf of the Customer before delivery whether at the Premises or elsewhere then upon the Company giving notice of the availability of the Processed Goods for inspection/testing the Customer shall inspect and/or test the Processed Goods within seven days of such notice. If the Customer does not inspect or test the Processed Goods within the time specified or if within seven days of such testing or inspection the Customer does not notify the Company in writing that the Processed Goods are not in accordance with the Contract specifying the matters complained of then the Customer shall conclusively be deemed to have accepted the Processed Goods as being in accordance with the Contract and shall not thereafter be entitled to reject the Processed Goods on the grounds of anything which such testing or inspection has or would have revealed.
- 11.7. In the event that the Customer serves written notice on the Company pursuant to clause 11.4.7 (a) above, the Customer shall afford to the Company reasonable opportunity to inspect the Processed Goods which are the subject of the written notice and, if so requested, by the Company, the Customer will return such Processed Goods to the Premises at the Customer's expense to enable the Company to carry out such inspection.
- 11.8. The sole and exclusive remedy of the Customer against the Company under the Contract whether in tort (including for negligence and breach of statutory duty), contract misrepresentation and otherwise, shall be:
  - 11.8.1. repeat the Processing, re-work components or any part of it; or
  - 11.8.2. upon the supply of additional Goods (and if applicable, additional samples) at the sole cost of the Customer, the re-performance of the defective portion of the Processes for the avoidance of doubt the additional Goods and/or samples shall be the same as those Goods upon which the Processes were initially performed; or
  - 11.8.3. At the Company's option, a refund or credit to the Customer in the amount of the price paid for the defective portion of the Processes.
- 11.9. The Customer's remedies under these terms shall only be available if:
  - 11.9.1. the Customer has paid all sums owed to the Company under the Contract;
  - 11.9.2. the Customer notifies the Company in writing of the alleged basis of any relevant grounds it has to bring a claim within two months of being aware of the basis for such a claim and within one year of completion of the Processes to which the claim relates; and

- 11.9.3. the Company is permitted to inspect any and all of alleged defective Processed Goods.
- 11.10. If the Company's performance of any of its obligations under the Contract is prevented or delayed by any acts or omissions by the Customer or failure by the Customer to perform any relevant obligations ("Customer Default"):
- 11.10.1. without limiting or affecting any other right or remedy available to the Company, the Company shall have the right to suspend performance of any services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from performance of any of its obligations in each case to the extent Customer Default prevents or delays the Company performance of any of its obligations;
- 11.10.2. the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 11.9 and;
- 11.10.3. the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## **12. Intellectual Property Rights**

- 12.1. All Intellectual Property Rights in or arising out of or in connection with the Processes (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Company and any of its third party assigns.
- 12.2. The Customer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the Contract for the purpose of providing the Processes to the Customer.

## **13. Liability**

- 13.1. The Customer expressly holds itself out as making the Contract in the course of a business and the Company deals with it on that basis and not as a consumer.
- 13.2. Except as expressly provided in these Conditions, all warranties, statements, terms and conditions, or undertakings which may be implied by statute, common law, custom of the trade or otherwise are hereby excluded to the extent permitted by law.
- 13.3. The Company does not exclude liability for death or personal injury resulting from its negligence or that of its employees or such that may not otherwise be limited or excluded by law.
- 13.4. Subject to clause 13.3 the Company's total aggregate liability to the Customer (whether based on an action or claim in contract, tort (including negligence), breach of statutory duty or otherwise) arising out of or in relation to the Contract shall not exceed 100% of the invoice value under the Contract in respect of any one event or series of events.
- 13.5. Subject to clause 13.3 the Company will not be liable to the Customer for any:
- 13.5.1. indirect consequential or special loss, damage or injury or economic loss (including but without limitation financial loss of profits, loss of business or business revenue or contracts, loss of operating time or loss of use) whether foreseeable or not to the Customer or to the Customer's property howsoever, whensoever or wheresoever arising whether by reason of any representation or misrepresentation or any implied warranty condition or other term or duty at common law or under statute or under the express terms of the Contract (and whether caused by the negligence of the

Company or otherwise) or otherwise in respect of or in connection with the Processing of the Goods or their use or resale by the Customer except as expressly provided in these Conditions.

- 13.6. The weight or quantity of the Processed Goods printed upon the Company's advice/dispatch note shall be final unless the Customer shall have given written notice of any discrepancy in weight or quantity within seven days after receipt of the Processed Goods and has thereafter given the Company a reasonable opportunity of witnessing a verification of the Processed Goods before they have been used, processed or sold, provided always that the Customer acknowledges and accepts there shall be excluded losses of 3% of the Goods from the weight or quantity of Processed Goods (being the norm in the industry for losses during Processing of Goods).
- 13.7. The Company is concerned to ensure that the price of Processing remains competitive and takes into account:
- 13.7.1. the fact that the Customer is in a better position than the Company to know or ascertain the amount of any loss which will arise out of any defect in the Processed Goods;
  - 13.7.2. the fact that the extent of the damage that might be caused or alleged to be caused to the Customer or to the Goods is disproportionate to the amount that can reasonably be charged (and is charged) by the Company to the Customer for the Processing;
  - 13.7.3. the natural hazards of certain Processing, the fact that the Company only carries out one part of the whole manufacturing process and the Company's lack of control over the type or quality of material used, the manufacturing process used and the final use of the Goods;
  - 13.7.4. the terms and conditions upon which the Company's own suppliers are prepared to supply goods and services to the Company. This must necessarily involve the incorporation of the terms and conditions set out in this clause 13.
- 13.8. Nothing in this clause shall limit or exclude any liability for fraud.
- 13.9. Limitation of Liability in respect of Mechanical Testing Services:
- 13.9.1. The following additional terms will apply if the Processes include the provision of Mechanical Testing by the Company on any Goods. To the extent that there is any conflict between these additional terms and the rest of the terms and conditions, the provisions of this clause 13.9 shall take precedence but only in relation to any conflict arising due to the Mechanical Testing of any Goods by the Company.
  - 13.9.2. The Customer acknowledges and expressly agrees that Mechanical Testing services carried out by the Company can damage and/or destroy any and all samples and any other materials or property delivered to the Company for Mechanical Testing.
  - 13.9.3. When Mechanical Testing services are carried out, the Company shall not be liable for any costs or losses resulting from damage to or destruction of any property belonging to the Customer unless the relevant property and the relevant Order in respect for the Processes is marked "Do Not Destroy". If the Contract and the Customer's property are so marked, the Company's liability for damage is limited to the lesser of:
    - a) the value of the Customer's property; or
    - b) the cost of the Processes performed on the damaged property pursuant to the Quote provided by the Company.

Under no circumstances will the Company be responsible for any additional costs or damages, including consequential damages and indirect costs or losses, resulting from destruction of Customer's property.

#### **14. Acknowledgement**

- 14.1. The Customer acknowledges and accepts that various Processes carry risks to the Goods including, but not limited to, cracking, distortion, arcing, cleanliness of received parts, contamination from previous processing, failure to respond, failure to bond and segregation, final fit-up and tolerance, improper powder mixing, incorrect final composition, can weld integrity, manufacturing history, surface finish, size and sections for which the Company has no control, the Customer accepts full responsibility and the Customer enters into the Contract on such basis.
- 14.2. Accordingly the Customer shall be responsible for ensuring that the Goods are suitable for Processing. If prior to or at any time during Processing the Company forms the opinion in its absolute discretion that the Goods are unsuitable for Processing or for the continuation of Processing (as the case may be) the Company shall be entitled to discontinue Processing forthwith and will notify the Customer as soon as reasonably practicable. The Company will invoice the Customer for costs incurred and Processing actually carried out and clause 3 shall apply to payment as if the Processing had been completed. Unless otherwise agreed in writing by the Company the Customer shall collect the Goods at its own risk and expense from the Premises. Collection of the Goods shall take place within ten Working Days of receipt of notification from the Company that the Goods are unsuitable for Processing in the absence of which the Company may at its election apply the provisions of clause 7.6 as if they referred to the Goods.

#### **15. Indemnity**

- 15.1. The Customer shall indemnify and keep the Company indemnified from and against any liability of any kind to any third party howsoever arising (whether in contract, tort or otherwise and including, but not limited to, liability arising from the negligence of the Company or from the negligence of any person for whom the Company is vicariously liable) in respect of or in connection with:
  - 15.1.1. any defect in the Goods; and/or
  - 15.1.2. any inadequate or inaccurate instructions, information, specifications, drawings or technical descriptions given by the Customer, its employees or agents relating to the Processing of the Goods; and/or
  - 15.1.3. any defect in the Customer's title to the Goods or authority to contract with the Company for the Processing; and/or
  - 15.1.4. any loss, injury or damage of any kind (whether direct indirect or otherwise and including but not limited to any loss of profit and/or any incidental consequential or special loss or damage of any description) arising out of in respect of or in connection with the supply of the Processed Goods or their use or resale; and/or
  - 15.1.5. any losses, claims, demands or damages incurred by the Company exceeding the Company's liability pursuant to these Conditions.
- 15.2. The Customer shall indemnify the Company against all losses, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent copyright design trade-mark or other industrial or intellectual property rights of any person which results from the Company's use of the Customer's design drawing specification tooling or goods (including but not limited to the Goods).

#### **16. Force Majeure**

- 16.1. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Company's reasonable control:
- 16.1.1. acts of God, explosion, flood, tempest, fire or accident;
  - 16.1.2. war or threat of war, sabotage, insurrection, terrorism, civil disturbance, requisition, epidemic or pandemic;
  - 16.1.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 16.1.4. import or export regulations or embargoes;
  - 16.1.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
  - 16.1.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 16.1.7. power failure, power spikes, micro power cuts, ambient weather temperature changes or breakdown in machinery.

## **17. Waiver**

The rights of the Company or the Customer shall not be prejudiced or restricted by any indulgence or forbearance by either Party to the other and no waiver by either Party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

## **18. Severance**

In the event of any of the words, provisions, terms and/or conditions herein contained being unenforceable or void for any reason whatsoever, each word, provision, term or condition (including any clauses herein contained) shall be deemed to be severable from the remaining words, provisions, terms or conditions and such remaining words, provisions, terms or conditions shall remain in full force and effect.

## **19. Notices**

Notices to be served under these conditions shall be in writing and delivered by hand or sent by first class prepaid post to either party at its last known place of business. Notices sent by post shall be deemed served 2 Working Days after posting and notices sent by hand shall be deemed served when received. Notices may be sent by the Customer to the Company by email to the address [sales@wallworkht.com](mailto:sales@wallworkht.com) and shall be acknowledged on receipt upon which event it shall be deemed to be served.

## **20. Governing Law and Jurisdiction**

- 20.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 20.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).

## **21. Third Party Rights**

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall be excluded from this Contract.

**22. No Agency or Partnership**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**23. Entire agreement**

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**24. Reliance**

Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.