



Terms and Conditions for the Provision of Services (“**Conditions**”)

The Customer’s attention is drawn to clauses 2.9 and 13 in particular.

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 affiliate company of WHT Holdings Ltd., as named in the relevant order or quotation, with whom the Customer contracts;

“**Contract**” means the contract between the Company and the Customer for the Processing of Goods, comprising the Quotation (where applicable), Order, Acknowledgment and these Conditions;

“**Customer**” means the person, firm, company or legal entity named in the relevant Order;

“**Due Date**” has the meaning given in clause 3.2;

“**Equipment**” has the meaning given in clause 10.2;

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

“**HIP**” means hot isostatic pressing;

“**HIP Parameters**” has the meaning given in clause 11.2;

“**Information**” has the meaning given in clause 5.1;

“**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 order, purchase order or related documents for Processing as set out in the Customer’s written acceptance of a 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 or Acknowledgment;

“Processing” means the services, (including heat treatment, coating, brazing, HIP or any associated processing linked to HIP, Mechanical Testing Services and any other service offered by the Company from time to time, such as degreasing, cleaning, descaling, blasting, packing and unpacking, fixturing, loading, and associated transport) 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;

“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.

“Writing” and **“Written”** shall include e-mail transmission but not fax.

- a) 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.
- b) 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.
- c) 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.
- d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- e) To the extent of any inconsistency between documents comprising the Contract, the following order of precedence shall apply:
 - i. the Acknowledgment;
 - ii. the Quotation (where applicable);
 - iii. these Conditions;
 - iv. the Order.

2. Formation of Contract

- 2.1. The Contract is between the Company and Customer as principals and shall not be transferable by the Customer.
- 2.2. 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.
- 2.3. Where the Quotation or Acknowledgement contains documents and particulars in whatever form (including electronic) produced by the Company including 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.

- 2.4. 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.
- 2.5. 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.
- 2.6. 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.
- 2.7. Subject to clause 2.8, pricing will be as set out in the Quotation. Where a Quotation is not supplied, the price charged for the Processing shall be determined from weighing Goods or applying a per part price or full load charge on receipt and assessing cost based on the Company's then-current standard prices. The Company will notify such cost to the Customer in the Acknowledgment. The Company's prices may be inspected at the premises of the Company. For the avoidance of doubt, the Company's prices shall include a minimum price chargeable in any circumstances.
- 2.8. 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.
- 2.9. Should the Customer object to pricing notified to it pursuant to clause 2.7 or 2.8 it must **provide immediate written notice of cancellation to the Company** as Goods will be promptly submitted for Processing.
- 2.10. Cancellation of the Contract by the Customer will entitle 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.
- 2.11. The Company will endeavour to 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.
- 2.12. The Customer shall be taken to have accepted these terms by providing any Goods to the Company for Processing. 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.
- 2.13. No variation to these Conditions shall be effective unless made in writing and signed by a director of the Company.
- 2.14. 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.
- 2.15. 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.

- 2.16. Goods supplied to the Company which are identified as requiring additional inspection upon receipt will be quarantined. The Customer will be contacted regarding either return of the Goods or the Company carrying out inspection for an agreed additional charge.

3. Prices and Payment

- 3.1. Unless otherwise stated, all prices provided in the Quotation, if applicable, or as otherwise advised by the Company 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, which the Company may advise from time to time in writing.
- 3.2. Each invoice shall be paid, without any deduction by way of set-off, counterclaim or otherwise, and monies 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 within thirty (30) 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 date(s) specified,in each case, "the **Due Date**". The time of payment of each invoice shall be of the essence of the Contract.
- 3.3. Save where payment is due in accordance with clause 3.2.1, the Company shall invoice the Customer after completion of the Processing of any part of the Goods and 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 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. If payment of an outstanding invoice is not 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 submitting an Order, 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 its suitability to the Goods. The Company reserves the right not to commence Processing until it is in receipt of all Information which it deems 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. The Customer shall be responsible for all import-related obligations and shall reimburse the Company for any customs charges, tariffs or taxes paid or payable by the Company in connection with the import of Goods to the United Kingdom.

- 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: (i) the return of original packing materials after the Processing; nor (ii) the suitability of any packing for the protection of Processed Goods.

6. Risk and Title

- 6.1. Unless the Contract expressly states the contrary, risk of damage or loss to Goods and the Processed Goods shall:
 - 6.1.1. pass to the Company once the Goods are made available for unloading by the Company at the Premises;
 - 6.1.2. remain with the Company whilst they are at the Premises; and
 - 6.1.3. pass back to the Customer on the earlier of: (i) making the Processed Goods (or any Goods to be returned) available for loading by the Customer or its subcontractor at the Premises; or (ii) if agreed in writing, the Company (or its subcontractor) making the Processed Goods or Goods available for unloading by the Customer at the Customer's delivery address.

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. The Company's liability in respect of Goods or Processed Goods in its possession and for which it bears risk at the time of any loss or damage is set out at clause 13.4.1. The Company is concerned to ensure that the price of Processing remains competitive and in determining its liability position it therefore takes into account:
 - 6.3.1. 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;
 - 6.3.2. 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;
 - 6.3.3. 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;

- 6.3.4. 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 limitations and exclusions set out in these Conditions.

It is therefore the Customer's responsibility to decide whether or not this limit of liability is acceptable - and to inform the Company in writing if it is not - before submitting the Goods for Processing. If increased liability for the goods is required by the customer. Then the customer must inform the company in writing and provide a quotation for insurance for their required cover, and to allow reasonable amendments to the order to take place to account for any additional charges.. The Customer will be responsible for the payment of all premiums and costs involved in effecting such increased insurance and the Company will not proceed with any Processing until the insurance policy is in place and all premiums are paid. Unless and until any higher limit has been fixed and paid for in accordance with this clause, the Company's liability for such causes of action shall remain as set out at clause 13.4.1.

- 6.4. Subject to clause 13, where a third party courier is engaged by the Company to dispatch any Goods or Processed 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. The Company shall have no liability for the acts or omissions of third parties engaged by the Customer.
- 6.5. Title to Goods shall at all times remain with the Customer.

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 in writing by the Company, by the Company dispatching the Processed Goods to that place. Reference to "**Processed Goods**" in this clause 7 or clause 8 shall be deemed to include any Goods to be returned to the Customer for any reason.
- 7.3. The Customer shall, unless the Company is to arrange delivery of the Processed Goods to the Customer's premises, collect the Processed Goods from the Premises within twenty (20) Working Days of the Company notifying the Customer that the Processed Goods are available for collection. The Customer shall be responsible for all export-related obligations and shall be liable for, and shall reimburse the Company in respect of, any customs charges, tariffs or taxes paid or payable by the Company in connection with the export of Goods or Processed Goods.
- 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 in respect of any delay 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 13.
- 7.5. Where the Processed Goods are to be delivered in instalments, 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 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. delivery of the Processed Goods shall be deemed to have been completed at 9.00am on the twenty first Working Day following the day on which the Company notified the Customer that the Processed Goods were ready for collection;
 - 7.6.2. store the Processed Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - 7.6.3. sell the Processed Goods at the best price readily obtainable in accordance with clause 7.8 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. Subject always to clause 13.4, where the Company bears the risk of damage or loss to the Processed Goods and agrees in writing to deliver 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 (21) 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 (7) Working Days of the delivery of the Processed Goods in any other case; and
 - 7.7.2. where the Processed Goods are transported by the Customer's freight carrier, it 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 (14) days' notice to dispose of such Processed Goods or property in such manner and at such price as it thinks fit, as agent of the Customer, and to apply the proceeds towards such debt, remitting to the Customer the remaining proceeds of sale or disposal after deduction of all the expenses incurred by the Company for the sale or disposal of the Goods.
- 7.9. The Company may store all or any part of the Processed Goods at locations other than the Premises.
- 7.10. The weight or quantity of the Processed Goods printed upon the Company's advice/dispatch note shall be final unless the Customer gives written notice of any discrepancy in weight or quantity within two (2) 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. The Customer acknowledges and accepts there shall be a permitted loss tolerance of 3% either way from the specified weight or quantity of Processed Goods (being the industry standard for losses during Processing of Goods).

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 (7) days; or
 - 8.1.2. the Customer fails to take delivery of any Processed Goods 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 (7) days of notice being given to the Customer that the same are ready for dispatch; or
 - 8.1.4. the Company receives notice of any allegation of Intellectual Property Rights infringement relating to its use of anything provided by the Customer; or
 - 8.1.5. the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or gives notice of an intention to appoint administrators or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation or takes any step in connection with formal insolvency proceedings; 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 clauses 8.1.5 to 8.1.7 has occurred or 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
 - 8.1.10. the Company receives notice of any claim alleging that the Goods or any part thereof or any Processing applied to the Goods infringe any Intellectual Property Rights of any other person; or
 - 8.1.11. the Customer fails to provide any letter of credit, bill of exchange or other security required by the Company.
- 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 work or 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 shall be liable for the acts and omissions 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 Processing, and must be received in a clean condition, free from contamination, foreign objects and inserts that may harm Goods during Processing, process stability and results. Any further work, processing, and preparation undertaken by the Company to make Customer's 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*" as provided by email and available on the Company's website.
- 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 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 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 and the Customer accepts full responsibility, and the Customer enters into the Contract on such basis.
- 10.4. 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 (10) 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.
- 10.5. The Customer shall defend, indemnify and hold the Company harmless from and against any loss, liability, cost, 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 or representatives 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 prior to placing such Order so as to form part of the Contract, otherwise no liability can be accepted in respect of any representation or opinion expressed.
- 11.2. HIP Processing will be provided on a basis of time, temperature and pressure as specified by the customer or, failing such specification, determined by the Company ("**HIP Parameters**"), and the Customer acknowledges and agrees that it will be accepted as correct Processing in accordance with the Contract providing the HIP Parameters are maintained. In such circumstances, the Company shall not be liable for any claim in connection with compliance with, or suitability of, HIP Parameters.
- 11.3. Notwithstanding the HIP Parameters, 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 the Company.
- 11.4. The Company shall (subject to the provisions of clause 13.3) be under no liability:
 - 11.4.1. in respect of any existing 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 (otherwise than by the Company's employees), 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; and
- 11.4.6. 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 (7) 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 immediately upon its discovery, specifying the matters complained of and affording the Company a reasonable opportunity of inspecting and testing 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 into other goods, or 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 any Customer specification. Where the Contract provides for testing or inspection of the Processed Goods by or on behalf of the Customer before delivery (which will be stated in the Quotation or Acknowledgment if applicable), whether at the Premises or elsewhere, then upon the Company giving written notice of the availability of the Processed Goods for inspection/testing the Customer shall inspect and/or test the Processed Goods within seven (7) days of such notice. If the Customer does not inspect or test the Processed Goods within the time specified, or if within seven (7) 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 revealed or would have been apparent upon careful inspection or testing.
- 11.7. In the event that the Customer serves written notice on the Company pursuant to clause 11.4.6a) or b) 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 in respect of Processed Goods' failure to meet any specification provided, whether in tort (including for negligence and breach of statutory duty), contract misrepresentation and otherwise, shall be, at the Company's option:

- 11.8.1. for the Company to 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 plus (if applicable) the cost of returning the defective Processed Goods for inspection.

The terms of this Contract shall be deemed to apply to any re-worked or replacement performance pursuant to this clause.

- 11.9. If the Company's performance of any of its obligations under the Contract is prevented, hindered or delayed by any acts or omissions by the Customer or failure by the Customer to perform any relevant obligations ("**Customer Default**"):
 - 11.9.1. 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 the Customer Default prevents or delays its performance of the same;
 - 11.9.2. 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
 - 11.9.3. 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, including all documents and particulars referenced in clause 11 (other than Intellectual Property Rights in any Information, specification or other materials provided by the Customer) shall be owned by the Company or its licensors.
- 12.2. The Customer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence, with right to grant sub-licences, to copy and modify any materials provided by the Customer to the Company for the sole purpose of quoting for and 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, fraud or such other liability that may not otherwise be limited or excluded by law.
- 13.4. Subject to clauses 6.3, 11.8, 13.3 and 13.5, and with regard to any liability (whether based on an action or claim in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise) arising out of or in relation to the Contract:

- 13.4.1. in relation to loss of or damage to any Goods or Processed Goods that are held at the Company's premises and at the Company's risk, the Company's total liability in respect of such loss or damage shall be limited to the greater of: (i) £500 per tonne; and (ii) 100% of the invoice value under the Contract;
 - 13.4.2. the Company's total aggregate liability to the Customer in respect of other claims shall not exceed 100% of the invoice value under the Contract; and
 - 13.4.3. the Company shall not be liable in respect of any: indirect, consequential or special loss, whether foreseeable or not, whensoever or wheresoever arising.
- 13.5. Limitation of Liability in respect of Mechanical Testing Services:
- 13.5.1. The following additional terms will apply if the Processes include the provision of Mechanical Testing Services by the Company on any Goods. To the extent that there is any conflict between these additional terms and the rest of the Conditions, the provisions of this clause 13.5 shall take precedence but only in relation to any Mechanical Testing Services by the Company.
 - 13.5.2. 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 Services.
 - 13.5.3. 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 an amount equal to the cost of the Processes performed on the damaged property pursuant to the Quotation or Acknowledgement provided by the Company.

Subject always to clause 13.3, 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. Indemnity

- 14.1. The Customer shall indemnify and keep the Company indemnified from and against any and all liability, losses, damages, costs and expenses of any kind (whether direct, indirect or otherwise and including any loss of profit and/or any incidental, consequential or special loss or damage of any description) awarded against or incurred by the Company to any third party howsoever arising (whether in contract, tort or otherwise and including liability arising from the negligence of the Customer or any person for whom the Customer is vicariously liable) in respect of or in connection with:
- 14.1.1. any defect in the Goods; and/or
 - 14.1.2. any inadequate or inaccurate instructions, Information or specifications given by the Customer, its employees or agents relating to the Processing of the Goods; and/or
 - 14.1.3. any defect in the Customer's title to the Goods or authority to contract with the Company for the Processing; and/or
 - 14.1.4. any loss, injury or damage of any kind arising out of, in respect of or in connection with the supply of the Processed Goods or their use or resale.

14.2. The Customer shall indemnify and keep the Company indemnified from and against any and all liability, 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 Intellectual Property Rights of any person which results from the Company's use of the Customer's Information, specification, tooling or goods (including the Goods).

15. Force Majeure

15.1. The Company shall not be liable to the Customer or be deemed to be in breach of contract or negligent by reason of any delay in performing or any failure to perform any of the Company's obligations under the Contract 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:

- 15.1.1. acts of God, explosion, flood, tempest, fire or accident;
- 15.1.2. war or threat of war, sabotage, insurrection, terrorism, civil disturbance, requisition, epidemic or pandemic;
- 15.1.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 15.1.4. import or export regulations or embargoes;
- 15.1.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- 15.1.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 15.1.7. power failure, power spikes, micro power cuts, ambient weather temperature changes or breakdown in machinery.

If the Company considers any such cause persists, it reserves the right to cancel the Order by written notice to the Customer and charge for its costs incurred to date, which may be the full amount of charges.

16. Confidentiality

- 16.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.
- 16.2. Each party may disclose the other party's confidential information:
- 16.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that such persons comply with this clause 16; and
 - 16.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

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. A waiver of any right or remedy under this Contract or by law is only effective if given in writing.

18. Severance

In the event of any provision or part-provision of the Contract being unenforceable or void for any reason whatsoever, it shall be deemed deleted but that shall not affect the validity and enforceability of the rest of this Contract.

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, or sent by email. Notices sent by post shall be deemed served two (2) Working Days after posting and notices sent by hand shall be deemed served when received. Notices sent by email shall be deemed delivered at the time of transmission or, if after 5pm, at 9am on the next Working Day (provided no error message is received to indicate failed delivery). Email notices may be sent by the Customer to the Company to the address sales@wallworkht.com and by the Company to the Customer using any email address stated in the Order. This clause does not apply to the service of any proceedings or other documents in any legal action, arbitration or other method of dispute resolution.

20. Third Party Rights

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

21. 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.

22. Entire agreement

- 22.1. 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. The Customer acknowledges that, in entering into this Contract, it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 22.2. 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.

23. Governing Law and Jurisdiction

- 23.1. 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.
- 23.2. 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). Nothing in this clause limits the Company's right to take proceedings against the Customer in any other court of competent jurisdiction applicable to the Customer, nor shall the taking

of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.