

THE DAYTON FORGING AND HEAT TREATING COMPANY TERMS AND CONDITIONS OF SALE

These terms and conditions, the attendant quotation and/or acknowledgment, and all documents incorporated by reference therein, bind the buyer ("Buyer") which issues the purchase order for the provision of services (Services) and/or the sale of goods (Goods) to be provided hereunder by The Dayton Forging & Heat Treating Company ("DFHT"), and constitute the entire agreement (Agreement) between Buyer and DFHT regarding such sale and/or provision. THE QUOTATION, PURCHASE ORDER AND/OR ACKNOWLEDGEMENT TO WHICH THESE TERMS AND CONDITIONS RELATE ARE EXPRESSLY LIMITED TO, AND EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF, THESE TERMS AND CONDITIONS. DFHT HEREBY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT DELIVERED BY BUYER AND DFHT SHALL NOT BE DEEMED TO HAVE ACCEPTED ANY ADDITIONAL OR DIFFERENT TERMS BY ITS ACCEPTANCE OF BUYER'S ORDER OR BY DFHT'S DELIVERY OF GOODS OR SERVICES. ALL ORDERS ARE SUBJECT TO ACCEPTANCE AT DFHT'S OFFICES IN DAYTON, OHIO.

1. QUOTATIONS: Any drawings, specifications or other data attached to any quotation furnished by DFHT, shall be deemed to be a part thereof. Any written Quotation of DFHT is subject to, and shall not be binding upon DFHT until the actual receipt by DFHT of Buyer's written order based upon these terms and conditions, without qualification, within [thirty (30)] days after the date of said Quotation. Any subsequent changes in the drawings, specifications or other data may require a changing in pricing by DFHT. All prices are subject to adjustment should DFHT experience a material increase in raw material prices and/or increased taxes or governmental charges.

2. PERMISSIBLE VARIATIONS: Unless otherwise specified in writing, all goods shall be furnished subject to DFHT's standard tolerances and variations (including, without limitation, those set forth in the applicable Quotation). DFHT reserves the privilege of shipping overages or underages of weight, length, size and/or quantity in accordance with DFHT's standard practices and the terms set forth in the Quotation.

3. DELIVERY AND DOCUMENTATION: All shipping dates are approximate and are based upon DFHT's prompt receipt of all necessary information from Buyer to properly process the order. Notwithstanding any provisions to the contrary in this or other documents related to this transaction, and regardless of how price was quoted, whether FOB, FAS, CIF or otherwise, legal title to the Goods and risk of loss thereto shall transfer to Buyer as follows: for sales in which the end destination of the Goods is within the United States, FOB at DFHT's facility in Dayton, Ohio and for sales in which the end destination of the Goods is outside of the United States, immediately after the Goods have passed beyond the territorial limits of the United States. Until indefeasible payment in full for the Goods and Services, Buyer grants to DFHT a purchase money security interest in any Goods for the purpose of securing any and all payments due DFHT. Buyer hereby authorizes DFHT to execute and file any additional documents deemed necessary by DFHT for purposes of perfecting such lien and security interest, including filing UCC financing statements. Any election by DFHT or failure to file a UCC financing statement will not affect or diminish the lien or security interest granted herein. Buyer shall provide DFHT with all data and documentation which is specifically identified in the quotation. In the event no other shipping dates are agreed upon in writing, no deferment at Buyer's request of shipment beyond the respective dates indicated will be made except on terms that will indemnify DFHT against all loss and additional expense, including, but not limited to demurrage, handling, storage and insurance charges. All expenses and risk of loss for any damages incurred in the transportation of the Goods, including but not limited to any risk of loss of loading or unloading, shall be borne solely by Buyer.

4. EXCUSE OF PERFORMANCE: DFHT shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or other unforeseen circumstances or causes beyond DFHT's reasonable control.

5. TERMINATION AND SUSPENSION BY BUYER : Upon receipt of a Buyer's written order, the order cannot be canceled, terminated or modified by the Buyer in whole or in part without DFHT's written consent.

6. LIMITED WARRANTY: Subject to the limitations contained in Section 8 hereof and except as otherwise expressly provided herein or in the Quotation, DFHT warrants that the Goods manufactured or Services provided by DFHT will be free from defects in materials or workmanship under normal use and care for twelve (12) months from the date of shipment by DFHT. If Buyer discovers any warranty defects and notifies DFHT thereof in writing during the applicable warranty period, DFHT shall, at its option, promptly correct any errors that are found by Buyer in the Goods or Services, or repair or replace F.O.B. point of manufacture that portion of the Goods or Services found by Buyer to be defective, credit the purchase price of the defective portion of the Goods/Services to future orders. Prior to replacement or credit for defective Goods, the defective Goods must be returned to DFHT for evaluation. Upon acceptance of the return, ownership of the defective Goods shall automatically transfer to DFHT. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources, unsuitable environmental conditions, accident, misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of DFHT are not covered by this limited warranty, and shall be at Buyer's expense. DFHT shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by an authorized DFHT representative. All costs of dismantling, reinstallation and freight and the time and expenses of DFHT's personnel for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by DFHT. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period or [ninety (90) days], whichever is longer. This limited warranty is the only warranty made by DFHT and can be amended only in a writing signed by an authorized representative of DFHT. THE FOREGOING LIMITED WARRANTIES ARE EXCLUSIVE, AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

7. WARRANTY REGARDING REPLACEMENT PARTS: DFHT's obligations under this warranty are expressly conditioned upon the use by Buyer of only such replacement parts as are manufactured or provided by DFHT. The use by Buyer, in equipment manufactured or provided by DFHT, of any replacement part which is not manufactured or provided by DFHT, voids all warranty obligations of DFHT with respect to Goods provided by DFHT.

8. INSPECTION: Buyer agrees to inspect all Goods upon delivery and must reject any non-conforming Goods by providing written notice to DFHT within thirty (30) days after delivery at the place of destination. Such notification shall identify each alleged non-conforming Goods and describe the portion of the shipment being rejected. Whether or not inspected, retention of the Goods, without written notice within such 30 day period, shall constitute full acceptance of the Goods by the Buyer. The remedy for any non-conforming Goods shall be subject to the limitations set forth in Section 8 hereof.

9. LIMITATION OF REMEDY AND LIABILITY: DFHT SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION, REPLACEMENT OR CREDIT OF PURCHASE PRICE UNDER THE LIMITED WARRANTY CLAUSE IN SECTION 5. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL DFHT'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO DFHT OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY DFHT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL DFHT'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE LIQUIDATED, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL.

10. PATENTS: Buyer acknowledges and agrees that the Goods will be manufactured by DFHT in accordance with specifications and drawings provided by Buyer. Therefore, Buyer shall defend any suits brought against DFHT based on a claim that use of the Goods manufactured by DFHT constitutes an infringement of a valid patent or intellectual property of any third party, and shall pay any damages awarded therein against DFHT. DFHT agrees following knowledge thereof, to provide prompt notification to Buyer in writing of the filing of such suit or the threat thereof; and permit Buyer to control the defense or compromise of such claim of infringement; and provide all reasonable assistance and cooperation requested by Buyer for the defense of such suit.

11. INSTALLATION: Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods.

12. CREDIT APPROVAL; TERMS OF PAYMENT: Acceptance of any order by DFHT and performance of the work thereunder shall at all times be subject to the approval of DFHT's credit department and DFHT may at any time decline to make any shipment or produce all or any portion of the Goods except upon receipt of payment or upon terms and conditions or security satisfactory to DFHT. Unless otherwise stated on the front of this instrument, terms are F.O.B. shipping point, net 30 days from date of DFHT's invoice in U.S. currency, except for export shipments for which Buyer may require other arrangements. Any cash discount stated herein or on any invoice shall not apply to any shipping or handling charges. The price stated includes all taxes except state or local sales or use tax or similar taxes which DFHT is required by law to collect from Buyer. Such taxes, if any, shall be separately stated in DFHT's invoice and paid by Buyer unless an exemption is available. If any payment owed to DFHT hereunder is not paid when due, it shall bear interest at the rate of one and one-half percent per month on the unpaid balance, not exceed the maximum rate permitted by law, from the date on which it is due until it is received. DFHT shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Upon failure of Buyer to make payment when due DFHT reserves the right to declare all open invoice, immediately due and payable. Buyer shall be liable for all expenses attendant to collection of past due amounts, including reasonable attorneys' fees. If the Goods are to be delivered outside the U.S.A. or Canada, (i) all payments shall be made in U.S. dollars available in the U.S.; (ii) unless otherwise agreed in writing, payment shall be made through a confirmed irrevocable letter of credit which is acceptable in form and substance to DFHT, (iii) Buyer shall be responsible at its own expense to obtain on a timely basis all necessary importation permits or exchange control permits, as applicable, and (iv) Buyer shall not make any use or disposition of the Goods which would violate U.S. export control laws.

13. BUYER SUPPLIED DATA: To the extent that DFHT has relied upon any specifications, information, representation of operating conditions or other data or information supplied by Buyer to DFHT in the selection or design of the Goods and/or provision of the Services and the preparation of DFHT's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by DFHT, any warranties or other provisions contained herein which are affected by such conditions shall be null and void. BUYER FURTHER REPRESENTS AND WARRANTS THAT THE GOODS AND SERVICES PROVIDED HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Accordingly, Buyer agrees to communicate the foregoing restriction in writing to any and all subsequent purchasers or users of the Goods and agrees to defend, indemnify and hold harmless DFHT from any and all consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action is based in tort, contract or otherwise.

14. GENERAL PROVISIONS: (a) Buyer shall not assign its rights or obligations under the Agreement without DFHT's prior written consent. (b) There are no understandings, agreements or representations, express or implied, not specified in the Agreement. (c) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of DFHT. (e) The Agreement is formed and shall be construed, performed and enforced under the laws of the State of Ohio.



MTI STATEMENT OF LIMITED LIABILITY
(Standards Adopted by the Metal Treating Institute, Inc.)
ALL WORK IS ACCEPTED SUBJECT TO THE FOLLOWING CONDITIONS (Please Read Carefully):

It is recognized that even after employing all the scientific methods known to us, hazards still remain in metal treating.

THEREFORE, OUR LIABILITY SHALL NOT EXCEED TWICE THE AMOUNT OF OUR CHARGES FOR THE WORK DONE ON ANY MATERIAL (FIRST TO REIMBURSE FOR THE CHARGES AND SECOND TO COMPENSATE IN THE AMOUNT OF THE CHARGES), EXCEPT BY WRITTEN AGREEMENT SIGNED BY THE METAL TREATER.

THE CUSTOMER, BY CONTRACTING FOR METAL TREATMENT, AGREES TO ACCEPT THE LIMITS OF LIABILITY AS EXPRESSED IN THIS STATEMENT TO THE EXCLUSION OF ANY AND ALL PROVISIONS AS TO LIABILITY ON THE CUSTOMER'S OWN INVOICES, PURCHASE ORDERS OR OTHER DOCUMENTS. IF THE CUSTOMER DESIRES HIS OWN PROVISIONS AS TO LIABILITY TO REMAIN IN FORCE AND EFFECT, THIS MUST BE AGREED TO IN WRITING, SIGNED BY AN OFFICER OF THE TREATER. IN SUCH EVENT, A DIFFERENT CHARGE FOR OUR SERVICES, REFLECTING THE HIGHER RISK TO TREATER, SHALL BE DETERMINED BY TREATER AND CUSTOMER.

THE TREATER MAKES NO EXPRESS OR IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AS TO THE PERFORMANCE OF CAPABILITIES OF THE MATERIAL AS HEAT TREATED, OR THE HEAT TREATMENT. THE AFOREMENTIONED LIMITATION OF LIABILITY STATED ABOVE IS SPECIFICALLY IN LIEU OF ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, AND OF ANY OTHER SUCH OBLIGATION ON THE PART OF THE TREATER.

No claims for shortage in weight or count will be entertained unless presented within five (5) working days after receipt of materials by customer. No claims will be allowed for shrinkage, expansion, deformity, or rupture of material in treating or straightening, except by prior written agreement, as above, nor in any case for rupture caused by or occurring during subsequent grinding. Whenever we are given material with detailed instructions as to treatment, our responsibility shall end with the carrying out of those instructions. Failure by a customer to indicate plainly and correctly the kind of material (i.e., proper alloy designation) to be treated, shall cause an extra charge to be made to cover any additional expense incurred as a result thereof, but shall not change the limitation of liability stated above.

Customer agrees there will be no liability on the treater in contract or tort (including negligence and strict liability action) for any special, indirect or consequential damages arising from any reason whatsoever, including but not limited to personal injury, property damages, loss of profits, loss of production, recall or any other losses, expenses or liabilities allegedly occasioned by the work performed on the part of the treater.

It shall be the duty of the customer to inspect the merchandise immediately upon its return, and in any event claims must be reported prior to the time that any further processing, assembling or any other work is undertaken.

OUR LIABILITY TO OUR CUSTOMERS SHALL CEASE ONCE ANY FURTHER PROCESSING, ASSEMBLING OR ANY OTHER WORK HAS BEEN UNDERTAKEN ON SAID MATERIAL.

No agent or representative is authorized to alter the conditions, except in writing duly signed by an officer of treater.

This (quotation/purchase order/sales acknowledgement) is expressly limited to the terms and conditions contained on the face and back thereof. Any different or additional terms contained in any of the buyer's forms are hereby deemed to be a material alteration hereof and notice of objection to them is hereby given.

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Signature

Date

Title

Company