



All Metals Processing of Orange County

www.amp-oc.com

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Terms and Conditions

These terms and conditions are exclusive and in lieu of all other terms and conditions appearing on Buyer's purchase order or elsewhere and apply to all quotations made and purchase orders accepted by the Seller unless specifically stated to the contrary on the face of this document. Seller is not responsible for typographical or clerical errors made in any quotations, orders or publications. All such errors are subject to correction. The terms and conditions contained herein, together with the terms of Seller's, constitute the entire agreement between Seller and Buyer with respect to the goods and services covered by the Buyer's purchase order, and supersede all prior communications and agreements thereto. Any acceptance by Seller of Buyer's purchase order is expressly conditioned upon Buyer's acceptance of these terms and conditions and the terms and conditions of Seller's quotation, which may not be changed or waived except in a writing signed by both parties. In the event of any conflict between the terms and conditions set forth herein and the terms and conditions set forth in the Seller quotation, those set forth in the Seller quotation shall prevail. Any additional, inconsistent or different terms and conditions in Buyer's purchase order or other communications from Buyer are hereby expressly rejected.

1. Price. Shipping allowances and prices are subject to change by Seller without notice. Increases in labor, transportation and other costs before completion of contract plus applicable overhead may be invoiced to Buyer. If a delivered price has been quoted, any charges at destination for spotting, switching, handling, storage and other accessorial services and demurrage shall be borne by Buyer, and the quoted price shall be adjusted accordingly. Seller reserves the right to correct any errors in specifications or prices.

2. Quotations. Quotations are limited to the specific processes and treatment services quoted therein; processes and treatments not specifically quoted will not be provided even if such processes and treatments are referenced in general specifications set forth in Seller's Quotation unless such Quotation is modified in writing to specifically quote such additional processes and treatments and the charges therefore. Buyer acknowledges that, unless specifically set forth in its purchase order and/or specifications, Seller does not know the handling, manufacturing and processing history of the parts and material provided to Seller for processing and treatment, and Seller is not responsible for the omission of pretreatment processes such as cleaning, peening, stress relieving, etc., unless such pretreatment processes are specifically quoted.

3. Processes and Treatments. Seller has performed only the specific processes and treatments set forth in its Invoice and/or Certificate of Conformance; processes and treatments not specifically set forth therein have not been performed even if such processes and treatments are referenced in general specifications set forth in its Invoice and/or Certificate of Conformance. Buyer acknowledges that, unless specifically set forth in its purchase order and/or specifications, Seller does not know the handling, manufacturing and processing history of the parts and material provided to Seller for processing and treatment, and Seller is not responsible for the omission of pretreatment processes such as cleaning, peening, stress relieving, etc., unless such pretreatment processes are specifically referenced in its Invoice and/or Certificate of Conformance.

4. Delivery. Unless otherwise specified on the face of this document, all deliveries are FOB point of shipment. Shipment shall be made in accordance with instructions issued by Seller. Upon delivery of goods to carrier, Buyer assumes risk of loss and damage resulting from any cause whatsoever. Shipping, delivery or performance dates are approximate and are not guaranteed.

5. Inspection and Acceptance. Parts and/or material processed by Seller shall be presumed to be inspected and accepted as satisfactory by Buyer if Seller is not notified of damages, shortages, or other discrepancies within ten (10) working days of Buyer's receipt of such parts and/or material. Rejected parts and/or material must be returned to Seller for rework. Further processing or assembly of rejected parts and/or material by Buyer or any other party shall constitute a waiver of any liability on Seller's part.

6. Force Majeure. Seller shall not be liable for any delay or other failure of performance due to causes beyond its reasonable control including without limitation: acts of God; acts of Buyer; acts of military or civil authorities; government regulations, order, directives and/or restrictions; fire or other casualty; strikes; lockouts; weather; epidemic; war; riot; delays in transportation or car shortages; or inability to obtain necessary labor, materials, components, equipment, services, energy or utilities through Seller's usual and regular sources at usual and regular prices. In any such event, Seller may at any time and from time to time without further liability to Buyer, (a) postpone its performance under this contract, (b) make partial performance or cancel all or any portion of this contract, or (c) allocate available quantities among its customers in any manner which Seller deems reasonable. Cancellation of any part of this contract shall not affect Buyer's duty to pay for performance of any other part hereof.

7. Warranty. Where Seller is given detailed instructions as to processes and treatment services to be performed, Seller warrants that it has reasonably followed such instructions, BUT MAKES NO OTHER WARRANTIES WHATSOEVER REGARDING SUCH SERVICES. If within thirty (30) days from the date of shipment the Buyer notifies the Seller that any services do not meet the warranty specified above, Seller shall thereupon correct any such defect by repairing any defective services; provided, however, that Buyer shall pay all transportation charges. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO ANY GOODS OR SERVICES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR PURPOSE, AND SUPERSEDE AND EXCLUDE ANY ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS.

8. Limitation of Seller's Liability. Seller's liability on any claim with respect to Buyer's parts and/or material directly damaged by Seller's processing is limited to direct labor and material cost of such parts and materials. Notwithstanding the forgoing or anything to the contrary contained herein, the aggregate cumulative liability of Seller to Buyer with respect to all goods and services provided to Buyer, whether pursuant to these terms and conditions, the Seller's

quotation or otherwise and whether arising in contract, tort (including, without limitation, negligence), or otherwise, shall under no circumstances exceed an amount equal to three (3) times Seller's charges for the particular services or goods which are the subject matter of a claim by Buyer. Seller is not responsible for the results of metal finishing operations that are unsatisfactory due to metal imperfections, changes in grade or composition of material, manufacturing and/or fabrication imperfections, usages for which the plating or other finishing operation was not reasonably designed, and similar variables over which Seller has no control. In such cases, Buyer remains responsible to pay the contracted price for the finishing operations performed by Seller. No claim for shortage in weight or count will be allowed unless made in writing and presented or mailed within three (3) working days after receipts of material or merchandise by the customer or the customer's consignee to whom it was delivered. However, a shrinkage of quantity in processing of two percent (2%) shall be allowed without charge or liability where operations or processing services performed by Seller are in the nature of "salvaging" parts and/or material, the work will be performed on a "best effort" basis and no liability shall attach to Seller unless it has previously agreed to such liability in writing prior to beginning the job.

IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS), OR DAMAGES IN THE NATURE OF PENALTIES.

9. Indemnification and Waiver. Buyer shall defend, indemnify and hold harmless Seller from and against all loss or damage sustained directly by Seller, and from and against all claims asserted against Seller with respect to the goods or services supplied hereunder, and from attorneys' fees/costs incurred by Seller in connection therewith, arising in whole or in part out of Buyer, its agents, employees and/or customers (a) failing to follow specifications, instructions, warnings or recommendations furnished by Seller; (b) failing to comply with all applicable legal requirements, including but not limited to, the Occupational Safety and Health Act of 1970, as amended; (c) misusing the goods; (d) making misrepresentations; (e) being solely or contributorily negligent; and/or (f) providing designs, plans, specifications or other instructions which infringe or are alleged to infringe any patent, trademark, copyright or other intellectual property right. Buyer hereby waives and releases Seller from all right of contribution or indemnity to which it may otherwise be entitled. As used in this paragraph 9, the term "Seller" shall include Seller, its officers, directors, agents, employees, subcontractors, parents, subsidiaries, divisions and affiliates.

10. Taxes/Other Charges. All taxes and other charges imposed by federal, state, local or foreign governments/authorities on the manufacture, sale, shipment, import, export, or use of the goods or in connection with the services supplied hereunder (other than income taxes) shall be paid by Buyer. Buyer shall defend, indemnify, and hold harmless Seller from and against all liabilities for such taxes or charges and attorneys' fees or costs incurred by Seller in connection therewith.

11. Payment; Security Agreement. Unless otherwise provided on the face of this document, payments to Seller shall be made in United States dollars within thirty (30) days after the date of Seller's invoice and are subject to a 1.5% monthly service charge. On orders to countries other than the United States, payment shall be made to Seller through the medium of a Letter of Credit to be established by the Buyer at its expense including any bank confirmation charges. All Letters of Credit shall be in favor of and acceptable to Seller, shall be maintained in sufficient amounts and for the period necessary to meet all payment obligations; shall be irrevocable and issued or confirmed by a bank in the United States satisfactory to Seller within thirty (30) days after acceptance of any order; shall permit partial deliveries; and shall provide for pro rata payments upon presentation of Seller's invoices and Seller's certificate of delivery of goods to Buyer, or of delivery into storage with certification of cause therefore, and for the payment of any termination charges. To secure payment of all sums due hereunder or otherwise, Seller shall retain a security interest in the goods supplied or processed hereunder and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest. Seller is relying on Buyer's representation of solvency, and if Seller at any time reasonably believes that Buyer is insolvent or that Buyer's credit is impaired, or if Buyer shall fail to make payment when due which payment is not cured within ten (10) days after receipt of notice of the same from Seller, Buyer shall be in material breach hereof, and Seller may, without liability to Buyer, withhold performance hereunder, stop any goods in transit, change the payment terms, and/or repossess goods theretofore delivered. The Seller's security interest in the goods supplied or processed hereunder shall remain until payment in full is received. Payment amounts in arrears shall bear interest at the maximum amount allowed by law or at three percent (3%) above the prime rate prevailing at the principal New York branch of Chase Manhattan Bank, or its successor, as of the date each amount falls due pending actual payment thereof in full without prejudice to any other remedy available to the Seller. Buyer shall be liable to Seller for all costs of collection, including attorneys' fees.

12. Notices. Notices supplied hereunder shall be deemed to have been duly given if delivered or mailed first class, registered mail, postage prepaid, or via any overnight courier, to the addresses set forth on the face of this document or to such other address as is reasonably appropriate.

13. Miscellaneous. The terms of this contract shall be governed by and interpreted in accordance with the laws of the state in which Seller's facility is located. Any litigation under this contract if commenced by Buyer shall be brought in the U.S. District Court for the judicial district in which Seller is located or, if such court does not have jurisdiction, then the state court in the county in which Seller is located, and Buyer shall accept venue in such court. No modifications to this contract shall be binding upon the Seller unless in writing signed by Seller's duly authorized representative. No waiver by Seller of default by Buyer shall be deemed a waiver of any subsequent default. The captions used herein shall have no substantive significance. The invalidity, illegality or unenforceability of any one or more provisions hereof shall in no way affect or impair the validity, legality or enforceability of the remaining provisions hereof, which shall remain in full force and effect. This contract may not be assigned by the Buyer without the prior written consent of the Seller.

NOTICE: Some metal plating products contain chemicals, including cadmium, chromium, nickel and lead, identified by the State of California as carcinogens or reproductive toxins. Contact Seller for further information if you believe the intended use of the product may cause persons' significant risk of exposure to such chemicals.

Seller is an equal opportunity employer.