Aalberts Surface Technologies Heat Ltd, Terms & Conditions of Sales

1. Definitions and Interpretation

In these Conditions:

(a) "**Company**" means Aalberts Surface Technologies Heat Ltd;

"**Customer**" means the person, firm, company or legal entity with whom the Contract is made;

"**Contract**" means the contract between the Company and the Customer for the Treatment of the Goods into which these Conditions are incorporated;

"**Quotation**" means the written or oral quotation given by the Company to the Customer;

"**Acknowledgement**" means the written acknowledgement of an order given by the Company to the Customer;

"**Goods**" means the Customer's goods described in the Quotation, Acknowledgement or subsequently supplied by the Customer to the Company for Treatment;

"**Premises**" means the Company's premises or place of business as shall be specified on the Quotation or Acknowledgment;

"**Treatment**" means the heat treatment (or other treatment) described in the Quotation or subsequently provided by the Company to the Customer;

"**Treated Goods**" means Goods after Treatment;

"**writing**" and "**written**" shall include e-mail, telex and facsimile 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.

2. Formation of Contract

2.1 Specifications, descriptions and illustrations contained in the Company's catalogues, brochures or other advertising materials (in whatever form including documents on any website) are intended to give only a general indication of the services concerned and the possible result of any heat treatment and no such specifications, descriptions or illustrations shall form any part of the Contract or form any warranty or representation by the Company;

2.2 The Quotations and its Acknowledgements in whatever form (including electronic) given by the Company but no other pre-contractual negotiations shall be deemed to include these Conditions (subject to the provisions of clause 2.11);

2.3 The Quotation forms an offer capable of acceptance by the Customer within 30 days from the date thereof, but the Contract shall not come into effect until the Customer has accepted the Quotation and until such time the Company shall be free to withdraw the offer. Where an order is placed by

the Customer for Treatment, it shall be deemed to be an offer to purchase heat treatment services subject to these Conditions;

2.4 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 Goods for Treatment or to cancel any contract without liability to the Customer;

2.5 The Company may notify the Customer of any necessary changes to the specification, materials or finishes used in the Treatment to conform to any applicable safety or statutory requirements if the Customer does not raise any objection;

2.6 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. The Customer undertakes to observe strict secrecy with such documents and particulars and not to disclose them to others 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.

2.7 The Company may by giving notice to the Customer at any time up to receipt of the Goods by the Company for Treatment increase any price quoted to reflect any increase in the costs of heat treatment 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.

2.8 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.

2.9 Insofar as an order by the Customer is in any circumstances regarded or held to constitute the terms of a counter-offer the Customer shall be taken to have withdrawn such counter-offer by delivering any Goods to the Company for Treatment or by accepting physical delivery of any of the Treated Goods from the Company.

2.10 These Conditions constitute the entire agreement between the Company and the Customer and no variation to these Conditions shall be effective unless made in writing and signed by a director (or an authorised officer or employee) of the Company. (At the request of the Customer the Company will verify in writing whether any named individual has the requisite authority)

2.11 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.

3. Prices and Payment

3.1 Unless otherwise stated, all prices quoted are the price of the Treatment in pounds sterling exclusive of VAT and do not include packaging or insurance. The Customer shall be responsible for any additional costs arising from part deliveries or express despatch including.

3.2 The price for each delivery (“the Price”) shall be paid in full without any deduction by way of set-off, counterclaim or otherwise and received by the Company:

(i) within thirty days of the date on which the Company notifies the Customer that the Treatment has been completed and the Treated Goods are ready for collection; or

(ii) 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 the Price shall be of the essence of the Contract.

3.3 If the Company shall notify the Customer in writing of completion of the Treatment of part of the Goods payment of such part of the price as relates to the completed part of the Treatment shall become due and payable forthwith notwithstanding that the remainder of the Treatment 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 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 being made on the Due Date, the Company may charge interest at the rate of 6% 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 Treatment and the Customer alone shall be responsible for the accuracy of such Information and their suitability to the Goods. The Company reserves the right not to commence Treatment 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 Treatment 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. Time for compliance with this clause 5.2 shall be of the essence.

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 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 Treated Goods. Where such materials are not reusable or in the opinion of the Company deemed inadequate for packing Treated Goods the Company will pack Treated 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 Treatment.

6. Risk

6.1 Unless the Contract expressly states the contrary, risk of damage or loss to Goods and the Treated Goods shall at all times (including whilst they are at the Premises and during transportation to and from the Premises) remain at the Customer's entire risk who shall be responsible for affecting and maintaining its own insurance cover in respect thereto. Without prejudice to the generality of the foregoing, the Customer shall insure the Goods and Treated Goods in transit irrespective of the means of transportation used.

6.2 The Customer is responsible in all cases for unloading the delivery vehicle and shall be responsible for all loss of or damage to the Treated Goods during the course of unloading.

7. Delivery

7.1 Any dates given in the Quotation, Acknowledgment or otherwise by the Company for when the Treated Goods will be available for collection shall be estimates only and shall not constitute essential terms of the Contract. Any delay in completing the Treatment shall not constitute a breach of contract entitling the Customer to terminate.

7.2 Delivery of the Treated Goods shall be made by the Customer collecting the Treated Goods at the Premises or, if some other place for delivery is agreed by the Company, by the Company dispatching the Treated 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 fourteen days of the Company notifying the Customer that the Goods are available for collection. Time shall be of the essence in relation to this clause 7.3.

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 Condition 11.

7.5 Where the Treated 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 Treated 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:

(i) store the Treated Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

(ii) sell the Treated 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 Treated Goods and provides for delivery of the Treated 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:

(i) gives written notice to the Company within twenty one days after the date of the Company's advice note or other notification of the despatch of the Treated Goods in the case of non-delivery, or within seven working days of the delivery of the Treated Goods in any other case; and

(ii) where the Treated 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

(iii) 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 paragraph 7.6 the Company shall have a general lien on all 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 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 Treated Goods at locations other than the Premises.

8. Cancellation and Suspension of the Contract

8.1 This Condition applies if:

(i) 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

(ii) the Customer fails to take delivery of any goods under any contract between the Customer and the Company otherwise than in accordance with the Customer's contractual rights; or

(iii) the Customer fails to supply the Company with instructions for despatch of the Treated Goods within seven days of notice being given to the Customer that the same are ready for despatch; or

(iv) unforeseen events including (without prejudice to the generality thereof) those referred to in Clause 14 materially affect the commercial effect of the Contract; or

(v) 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

(vi) an encumbrancer takes possession or a receiver administrative receiver or administrator is appointed over any of the property or assets of the Customer; or

(vii) the Customer ceases or threatens to cease to carry on business; or

(viii) the Company reasonably apprehends that any of the events mentioned in paragraphs (vi) and (vii) is about to occur in relation to the Customer and notifies the Customer accordingly; or

(ix) in the reasonable opinion of the Company the credit rating of the Customer is reduced; or

(x) if the Company receives notice of any claim alleging that the Goods or any part thereof or any Treatment applied to the Goods infringe any patent copyright design right trade mark or other industrial or intellectual property rights of any other person; or

(xi) 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 Company and, if the Treated 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

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. Duties and Responsibility

10.1 The Company will carry out the Treatment with reasonable skill and care. The employees of the Company are not authorised to make representations as to the skill and care which will be used by the Company in the provision of the Treatment or as to the quality or fitness for Treatment 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 Treatment 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.

10.2 The Company shall (subject to the provisions of Clause 11.3) be under no liability;

(i) in respect of any defect in the Goods;
(ii) in respect of any defect in the Goods or the Treated Goods arising from any information drawing design or specification supplied by or on behalf of the Customer;

(iii) in respect of any defect in the Treated 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 misuse of the Treated Goods without the Company's approval;

(iv) if the total price for the Treated Goods has not been paid by the Due Date;

(v) and the Customer shall be deemed to have accepted the Treated Goods and it shall be conclusively agreed that the Goods are in accordance with the Contract unless;

(aa) the Customer gives notice in accordance with clause 10.4; or

(bb) within seven days after receipt of the Treated 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 Treated Goods or other respect in which the Treated 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 Treated Goods are not otherwise in accordance with the Contract and thereafter provides to the Company a reasonable opportunity of inspecting and testing the Treated Goods before they have been used or resold; or

(cc) if a defect in the quality or state of the Treated Goods or other respect in which the Treated 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 Treated 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 Treated Goods in the property of a third party or the location of the Treated Goods in upon or under the premises or land of a third party;

10.3 After the Treatment the Company will normally test a small percentage of Treated Goods for conformity with the Customer's specification. Where the Contract provides for testing or inspection of the Treated 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 Treated Goods for inspection/testing the Customer shall inspect and/ or test the Treated Goods within seven days of such notice. If the Customer does not inspect or test the Treated 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 Treated Goods are not in accordance with the Contract specifying the matters complained of then the Customer shall conclusively be deemed to have accepted the Treated Goods as being in accordance with the Contract and shall not thereafter be entitled to reject the Treated Goods on the grounds of anything which such testing or inspection has or would have revealed.

10.4 In the event that the Customer serves written notice on the Company pursuant to clause 10.2 above the Customer shall afford to the Company reasonable opportunity to inspect the Treated Goods which are the subject of the written notice and, if so requested, by the Company, the Customer will return such Treated Goods to the Premises at the Customer's expense to enable the Company to carry out such inspection.

10.5 If the Treated Goods referred to in any written notice served by the Customer pursuant to clause 10.2 are found by the Company to be faulty as a result of Treatment or damaged as a result of the acts of omissions of the Company or its employees or agents (the “defective Treated Goods”) the Company will at its option and subject always to the provisions of clause 11.3

(i) repeat the Treatment or any part of it; or

(ii) credit the Customer with the appropriate part of the cost of faulty Treatment or damage to the defective Treated Goods and the reasonable cost of returning the defective Treated Goods to the Premises.

11. Liability

11.1 The Customer expressly holds itself out as making the Contract in the course of a business.

11.2 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.

11.3 The Company does not exclude liability for:

(i) death or personal injury resulting from its negligence or that of its employees;

(ii) direct physical damage to or physical loss of the property of the Customer resulting from the Company's its employees' or agents' negligent acts or omissions and which arise out of the performance of its obligations under the Contract provided that the Company's liability under this sub-paragraph 11.3 (ii) shall not exceed the lesser of £1,000 or three times the Contract price in aggregate in respect of any one event or series of events.

11.4 Subject to paragraph 11.3 the Company will not be liable to the Customer for any:

(i) direct loss damage or injury; and/or

(ii) 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 Treatment of the Goods or their use or resale by the Customer except as expressly provided in these Conditions;

11.5 The weight or quantity of the Treated Goods printed upon the Company's advice/despatch 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 Treated Goods and has thereafter given the Company a reasonable opportunity of witnessing a verification of the Treated 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 Treated Goods (being the norm in the industry for losses during Treatment of Goods)

11.6 The Company is concerned to ensure that the price of Treatment remains competitive and taking into account

(i) 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 Treated Goods;

(ii) 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 Treatment;

(iii) 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 11.

11.7 Where transportation of the Goods or Treated Goods is undertaken by a third-party courier or carrier, any liability of the Company for loss or damage occurring in transit shall be limited to the compensation recoverable from that third party under its applicable terms and conditions. Unless, prior to despatch, the Customer has expressly requested in writing that additional insurance cover be arranged to the declared value of the Goods or Treated Goods and the Company has confirmed in writing that such cover has been arranged, the Company shall not be liable for any amount exceeding the sum recoverable from the third-party courier or carrier. Where such additional cover has been confirmed, any additional recovery shall be subject to the terms, conditions, exclusions and limits of that cover and shall not exceed the declared value confirmed in writing by the Company. This clause does not transfer risk to the Company or relieve the Customer of its insurance obligations under clause 6.1, except to the extent expressly agreed in writing. In relation

to loss or damage occurring in such transit, this clause shall apply in place of the monetary limit in clause 11.3(ii), and any claim under clause 7.7 shall be subject to this clause. Nothing in this clause shall exclude or limit liability under clause 11.3(i) or any other liability which cannot lawfully be excluded or limited.

12. Acknowledgement

12.1 The Customer acknowledges and accepts that Treatment carries risks to the Goods including, but not limited to, cracking, distortion, failure to respond, segregation, hardenability and sharp corners dependent upon such factors as manufacturing history, size and sections for which the Customer accepts full responsibility and the Customer enters into the Contract on such basis.

12.2 Accordingly the Customer shall be responsible for ensuring that the Goods are suitable for Treatment. If prior to or at any time during Treatment the Company forms the opinion in its absolute discretion that the Goods are unsuitable for Treatment or for the continuation of Treatment (as the case may be) the Company shall be entitled to discontinue Treatment forthwith and will notify the Customer as soon as reasonably practicable. The Company will invoice the Customer for costs incurred and Treatment actually carried out and Clause 3 shall apply to payment as if Treatment 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 Treatment 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.

13. Indemnity

13.1 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:

(i) any defect in the Goods; and/or

(ii) any inadequate or inaccurate instructions information specifications drawings or technical descriptions given by the Customer its employees or agents relating to the Treatment of the Goods; and/or

(iii) any defect in the Customer's title to the Goods or authority to contract with the Company for Treatment of the Goods; and/or

(iv) 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 Treated Goods or their use or resale; and/or

(v) any losses claims demands or damages incurred by the Company exceeding the Company's liability pursuant to these Conditions.

13.2 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).

14. Force Majeure

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:

(i) acts of God explosion flood tempest fire or accident;

(ii) war or threat of war sabotage insurrection terrorism civil disturbance or requisition;

(iii) acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

(iv) import or export regulations or embargoes;

(v) strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

(vi) difficulties in obtaining raw materials labour fuel parts or machinery;

(vii) power failure or breakdown in machinery.

15. 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.

16. 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 paragraph or sub-paragraph 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.

17. Notices

Notices to be served under these Conditions shall be in writing and delivered by hand or sent by 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.

18. Proper Law

18.1 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.

18.2 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).

19. Third Party Rights

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