



## **HOUSTON PLATING & COATINGS, LLC STANDARD TERMS AND CONDITIONS OF SERVICES AND STATEMENT OF POLICY**

These Standard Terms and Conditions of Services and Statement of Policy (these “**Terms**”) are the only terms that govern the provision of services by Houston Plating & Coatings, LLC, a Delaware limited liability company (“**Company**”) to its CUSTOMER (“**Customer**” and, together with Company, the “**Parties**”). These Terms, the Purchase Order Requirements (as defined below) and the accompanying Quote, if a Quote is submitted by Company in connection with the Services (a “**Quote**” and, together with these Terms and the Purchase Order Requirements, this “**Agreement**”) collectively comprise the entire agreement between the Parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. For purposes of this Agreement, any and all services provided by Company to Customer shall be referred to herein as the “**Services**” and shall include any coating, plating, salt bath nitriding (SBN/QPQ), treating, phosphating sand-blasting, cleaning and other finishing and processing services provided by Company to Customer.

These Terms shall prevail in the event of any conflict with any terms and conditions provided by Customer in any form, including but not limited to any purchase order, specification, drawing, bill of material or email correspondence provided by Customer to Company in connection with the Services or otherwise. Provision of Services to Customer does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms or this Agreement. In case of conflict or inconsistency between the provisions hereof and any applicable laws or regulations, the provisions hereof shall prevail, to the extent legally possible (and to the extent legally impossible, shall be amended accordingly). The Parties acknowledge and agree that this Agreement cannot be modified, except in a valid written agreement signed by Company and the Customer. Any attempts to modify, supersede, add to, supplement or otherwise alter these Terms or this Agreement, whether contained in any purchase order, specification, drawing, bill of material, email correspondence or other printed form of Customer or elsewhere, are deemed rejected and excluded by Company and will not modify these Terms or this Agreement or be binding on the Parties, unless such terms have been fully approved in a written instrument signed by Company and the Customer.

1. **QUOTES.** Quotes are valid for ninety (90) days from issuance by Company. After ninety (90) days, prices and terms are subject to change without notice, unless otherwise specified. Prices estimated from a blueprint or verbal description are subject to revision on the basis of actual sample or a detailed review of the specifications and/or specific process required to complete the project. All quotations, orders, agreements or modifications thereof are contingent on and subject to any and all occurrences beyond the Company's control, including but not limited to: strikes and boycotts (whether occurring at Company's plant, Customer's plant, the plant or factory of any supplier of Customer or the Company, or elsewhere), accidents, thefts, fires, war, shortage of materials and equipment, casualty, or acts of God, and Company shall not be liable for failure to perform any agreement for such causes.
2. **PURCHASE ORDER REQUIREMENTS.** The Company's Purchase Order Requirements are attached to, incorporated in and made a part of these Terms (the "**Purchase Order Requirements**"). Customer shall make every effort to verify that all of the requirements set forth in the Purchase Order Requirements are satisfied for each project or order for Services, and any lead times and/or delivery dates shall be automatically extended on a day-by-day basis for any delays in Customer satisfying the Purchase Order Requirements. Failure to comply with the Purchase Order Requirements may result in delays or inaccuracies in the Services.
3. **CHANGE ORDERS.** If Customer wishes to change the scope or performance of the Services or the applicable delivery date(s), in each case as outlined in the applicable Quote or purchase order, Customer shall submit details of the requested change to Company, and Company shall, within a reasonable time after such request, provide a written estimate to Customer of (i) the likely time required to implement the change, (ii) any necessary revisions to the fees, pricing and other charges for the Services arising from the change, and (iii) any other impact the change might have on the performance of the Services. Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (the "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with this Section 3. A revised Quote or purchase order reflecting any such changes shall be issued prior to commencement of the applicable Services.
4. **DESTRUCTIVE TESTS; THIRD-PARTY TESTS.** Company does not perform tests (even when required by specification) that are destructive in nature and/or that require completion by a third party (i.e. laboratory), unless such tests are indicated in writing on the Customer's purchase order, included in the pricing for the Quote and paid for by Customer. If such testing is indicated in writing on the Customer's purchase order, Customer agrees to provide sufficient extra parts or specimens made from the same material for such testing. Company may perform such tests in-house or through a third party provider, at Company's option.
5. **DELIVERY.** Company will use commercially reasonable efforts to complete the Services and deliver, or make available for pickup by Customer, as applicable, the processed parts for Customer in accordance with the lead times and/or delivery date(s) set forth on the applicable Quote from the

Company; provided, that (a) Company receives the applicable parts from Customer on a timely basis as indicated on the Quote or otherwise and (b) the parts received by Company have been packaged properly, are not damaged or rusted and are otherwise in a condition suitable for immediate processing by Company; provided, further, that if no delivery date(s) are set forth in a Quote from the Company, then the Company's standard delivery terms shall apply. In the event that the parts received by Company are not in a condition suitable for immediate processing, Company shall notify Customer and request instructions on disposition by Customer, and Company may charge Customer additional fees or costs for any additional cleaning, treating or other preparation required to be performed by Company that is not specified in the Quote. Any lead times and/or delivery dates shall be automatically extended on a day-by-day basis for any delays in Customer delivering parts to Company in a condition not suitable for immediate processing by Company. In any event, Company shall not be liable to Customer for any late fees, penalties or fines or for any lost profits, lost revenue, loss of customer or contract, special, indirect, incidental, punitive or consequential damages or other losses or damages arising out of any failure to deliver processed or finished parts to Customer in accordance with the applicable delivery schedule or otherwise, regardless of whether or not such delay was caused by Customer's failure to deliver parts to Company on a timely basis and in a condition suitable for processing, unless Company expressly agrees to such late fees, penalties or fines in the Quote or in a separate written agreement signed by Company and Customer. Company reserves the right to make partial or installment deliveries, for which Customer shall pay at the contract price. Defective delivery or non-delivery with respect to any installment or partial delivery under this contract shall be a severable breach and shall not give Customer the right to treat the entire contract as breached.

6. **PACKAGING AND CONTAINERS FOR DELIVERY.** During storage and transportation of Customer parts, Customer pallets and containers used for delivery to Company may be used for reshipment and any damage resulting from the use of such pallets or containers shall be at Customer risk. Should Customer indicate in the written order that Customer desires other packaging, pallets or containers, or if Company needs to procure additional pallets or containers in order to properly wrap and ship finished parts to Customer, Company will provide such service and will charge material and handling for such additional other or additional packaging, pallets or containers.
7. **TAXES.** Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder.
8. **INTELLECTUAL PROPERTY.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to (a) all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of

Company in the course of performing the Services and (b) any special tooling required for performance of work herein described that has been designed and/or built by Company shall be owned by Company and shall be and remain Company property, whether or not Customer is charged for time and material in connection therewith..

9. **PAYMENT OF INVOICES; DELINQUENT PAYMENTS.** Invoices unpaid on due date shall be considered delinquent and thereafter subject to a finance charge computed by a single monthly periodic rate of 1.5%, being an annual percentage rate of 18%. Company reserves the right to suspend or terminate Services on all written orders pending with Customer in the event Customer is delinquent on any single invoice.
10. **TERMINATION; CANCELLATION.** Orders may be terminated or cancelled by Customer by written notice to Company and only upon condition that Customer pays to Company the amount of labor and material expended together with a reasonable amount of profit to date of written notice of termination or cancellation.
11. **WARRANTY.** (a) Company warrants that Services shall meet Customer specifications supplied in writing to Company; provided, that, the Company's warranty extends only to its application of the applicable plating or coating in accordance with such specifications and not to the performance of the finish itself. If Customer supplies specifications or specifies other methods or procedures to be followed, Company does not warrant, and assumes no responsibility for, the correctness of any such specifications, methods or procedures or the result obtained when they are followed. In the absence of written disclosure by Customer of: the composition or use of parts to be processed or finished, prior use of water-soluble oils, prior heat treating, presence of unusual substances such as adhesives or paint, masking instructions, and other pertinent information, Company assumes no responsibility for subsequent failures or defects. Company does not guarantee results from instructions, whether verbal or in writing. All instructions as to treatment, materials, tolerances, and specifications for processing shall be in writing and delivered to Company at time of placing order by Customer. Furthermore, Customer is alerted that the finishing process is not suitable for parts that cannot withstand the tumbling process, especially any fragile or bendable parts. For special or experimental finishing, Company charges are not contingent on success of the work or the benefit derived therefrom by Customer. If work performed by Company is in the nature of salvaging parts, including stripping of previously applied coating/plating, then Company will perform such work, and such work is accepted by Customer, on a commercially reasonable efforts basis, and Company makes no warranties and shall incur no liability of any kind or nature whatsoever with respect to such work. The Parties agree that their intention is to enter into a service contract outside of the Uniform Commercial Code.  
  
(b) Company requires Customer to notify Company in writing of any defects within five (5) business days of receipt of the parts or other product, and Customer shall supply objective evidence (*e.g.*, pictures, video, *etc.*) of such defects at the time of notification. Customer shall make any parts with suspected defects available to the Company for inspection. Parts with suspected defects shall not be

altered in any way by Customer or otherwise prior to notification and inspection by the Company. In the event that Customer does not comply with the foregoing procedures and requirements for reporting suspected defects in parts, Customer accepts sole responsibility for any such suspected defects, as well as any rework, scrap material or shipping costs related to such suspected defects. Because the Services Company provides are subject to degradation from exposure to the environment as soon as it is applied, Customer acknowledges that timeliness in reporting defects is imperative. Furthermore, Customer acknowledges that Company is not liable for any degradation or latent defects that arise or occur outside of the five (5) business day warranty period, and that improper or deficient Customer transport, storage, use, and handling can be detrimental to the Services provided by Company, for which Company assumes no liability or obligation. Any latent defects arising while in Customer possession and/or outside the five (5) business day warranty period shall be a risk borne solely by the Customer for which Company assumes no liability or obligation.

**(c) EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 11, COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES AND THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER REPRESENTS AND WARRANTS TO THE COMPANY THAT CUSTOMER IS NOT RELYING ON, AND WILL NOT RELY ON, ANY REPRESENTATIONS OR WARRANTIES MADE OR PURPORTED TO BE MADE BY THE COMPANY OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES WITH RESPECT TO THE SERVICES, THIS AGREEMENT OR OTHERWISE, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 11.**

12. **LIMITATION OF LIABILITY:** (a) The Customer understands that the pricing given for the Services provided by the Company was provided based in part on the limitations set forth in this Section 12. If the Customer does not wish to be bound by the limitations set forth in this Section 12, then Customer should not place purchase orders with Company, but should contact the Company to discuss alternative pricing if the Customer wishes to increase amount of liability imposed on the Company. Given this, the Company's liability for any damages incurred by Customer is limited to the cost of Services quoted to the Customer. Customer acknowledges that these liability limitations apply to Company for any cause whatsoever, regardless of the form of any claim or action (whether based in contract, tort or otherwise) including Company negligence or breach. Liability greater than described here is not assumed by Company absent Company's express agreement in writing to assume such liability. By placing purchase orders with Company, Customer acknowledges and agrees that these limitations apply to any and all remedies of Customer for any damages suffered.

As to any loss, damage or defective service to any item, Company's liability shall be limited to refinishing at no charge, replacement of parts on which Company performed finishing of less than standard quality or which were damaged while in Company control, or, at Company's option, Company will reverse the unit charges for any part which it cannot restore. No claim for shortage will be allowed unless made in writing and presented or mailed to Company within five (5) business days after receipt of parts by Customer/consignee to whom delivered, *provided, however*, that shrinkage of quantity of up to two percent (2%) shall be allowed without charge or liability. Company will be liable for shrinkage in quantity in excess of two percent (2%) only if the cost of parts was stated in writing on the Purchase Order. Company reserves the right to hand count a shipment and advise Customer of any error. Parts found upon Company inspection to be improperly processed by Company will be refinished at no charge or a cost adjustment will be made; *provided that*: a) notice of defect is provided in writing by Customer to Company within five (5) business days from the date of delivery; and b) parts are in same condition and as carefully packed as when originally delivered by Company. Any processing, assembly or use of such rejected parts or other items by Customer or any other party shall constitute a waiver of all liability on Company's part.

**(b) In no event shall Company be liable to Customer OR ANY THIRD PARTY for (a) any damages resulting from loss of data, intellectual property, lost profits, lost revenue, loss of use of equipment, lost contracts or cost of procurement of substitute goods, or (b) any special, indirect, incidental, consequential, punitive, reliance, or exemplary damages, however caused and under any theory of liability whether based in contract, tort (including negligence), or otherwise. The foregoing limitations shall apply regardless of whether Company has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy. In no event shall company's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise exceed the aggregate amount paid or payable to company pursuant to the APPLICABLE QUOTE.**

(c) Company assumes no liability for loss or damage to parts while in transit to or from any Company factory or facility, whether in Company's or Customer's trucks or other vehicles or in the possession of any third party acting in the Company's or Customer's behalf. Customer's parts may be stored in uncovered lots and/or buildings without air conditioning. Company shall not be liable for deterioration of finishing, rust or other damage to or deterioration of parts (including due to exposure to sun, rain or other weather conditions) while in storage. Storage charges will be made for work held over one week after Customer is notified of completion.

(d) Company shall not under any circumstances be considered an insurer of any Customer parts and shall not be liable, regardless of cause for loss by fire, explosion, accident, theft, vandalism, casualty, or acts of God while parts are in Company possession. The provisions of this Section 12 may be modified only by separate written agreement signed by Company, and any liability Company assumes will be covered by a separate charge for such coverage.

13. **LIEN.** All Customer parts in Company possession shall be subject to a lien for all monies and other amounts owing by Customer to Company under this Agreement or otherwise in connection with the Services, including but not limited to all amounts owed by Customer to Company for work, labor or other Services rendered, or materials or equipment used in connection with such parts.
14. **GOVERNING LAW; VENUE.** This Agreement, and all actions, causes of action, or claims of any kind (whether at law, in equity, in contract, in tort (including negligence or breach of statutory duty) or otherwise) that may be based upon, arise out of, or relate to this Agreement or the Services shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule. Each Party irrevocably agrees that the courts of the State of Texas located in Harris County, the courts of the United States for the Southern District of Texas, and appellate courts from any thereof shall have exclusive jurisdiction to settle any action, claim, lawsuit or dispute (whether at law, in equity, in contract, in tort (including negligence or breach of statutory duty) arising out of or in connection with this Agreement, its subject matter, negotiation or formation or the Services, and each Party irrevocably waives any objection to jurisdiction or venue of any such action, claim, lawsuit or dispute and shall not assert any defense based on lack of jurisdiction or venue or based upon *forum non conveniens*. If any action, claim or lawsuit by Company is necessary to enforce any covenants or obligations of Customer arising out of this Agreement, or to collect any monies due to the Company from Customer hereunder, Customer agrees to pay Company's reasonable attorney's fees and costs of such action, claim or lawsuit.
15. **INDEMNITY.** The Customer agrees that the Customer will defend, indemnify and hold Company harmless from all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, fees, costs (including attorneys' fees and costs), expenses or disbursements of whatever kind which may at any time be imposed upon, incurred by or asserted against the Company or its officers, employees, affiliates or representatives in any way relating to or arising out of the Services provided to Customer or attributable to any defect from such Services. The Customer bears the risk of any loss, damage or casualty occurrence regarding the Services.
16. **AUTHORITY;** This Agreement shall apply to this and any future order or agreement for processing or finishing of any Customer parts. The Customer (a) acknowledges that Customer has read and understands this Agreement and the Standard Terms and Conditions of Sale and Statement of Policy as set out herein, and each and every term thereof, and agrees to be bound by this Agreement, and (b) warrants that Customer is authorized to enter into this Agreement, and that this Agreement is an integral part of all invoices and purchase orders, specifications, drawings, bills of material, written instructions, email communications and other communications between Customer and Company and governs all such documents and instruments and all matters set forth herein and therein.

17. **SEVERABILITY**. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the terms of this Agreement are fulfilled to the fullest extent possible.
18. **CONTROLLING EFFECT**. Nothing to the contrary notwithstanding, it is specifically agreed and understood that if there is any ambiguity or conflict between any purchase order, specification, drawing, bill of material, written instructions or other printed form or email communications of Customer and this Agreement, then this Agreement shall control and prevail. Customer acknowledges that Company only accepts Customer purchase orders, and agrees to perform Services for Customer solely upon Customer agreeing and assenting that this Agreement, and the Standard Terms and Conditions of Service and Statement of Policy contained herein, are controlling.
19. **ENTIRETY**. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, with respect to the subject matter hereof.