SOLAR ATMOSPHERES

# Credit Application

877 Vernon Way, El Cajon CA 92020
P: 619.593.3636
solaratm.com

## Contact Information

Contact Name: _____

Company Name: _____

Address: _____

Phone Number: _____

Email Address: _____

## Billing Information

AP Contact Name: _____

Company Name: _____

Address: _____

Phone Number: _____

Email Address: _____

## General Company Information

Federal Tax ID Number: _____

Company Name: _____

Principle Officer: _____

Title: _____

Please check the appropriate item:

☐ Corporation ☐ Partnership ☐ Individual/Sole Proprietor ☐ Other

In Business Since: _____

Business Type: _____

## Bank References

Bank Name (#1): _____

Address: _____

Bank Contact: _____

Bank Acct#/Type: _____

Bank City/State/Zip: _____

Phone Number: _____

Bank Name (#2): _____

Address: _____

Bank Contact: _____

Bank Acct#/Type: _____

Bank City/State/Zip: _____

Phone Number: _____

## Trade References

| Company | Contact | Street | City/State | Email |
|---|---|---|---|---|
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The signature below represents and warrants that (A) the party signing below is an authorized representative of the company; and (B) that the information provided herein is a complete and accurate representation of the company's financial situation as of the date hereof. Any misrepresentation or fraudulent information provided will be the basis for default under this agreement. By signing this form, I expressly authorize Solar Atmospheres to contact credit reporting agencies and the above references to determine credit worthiness.

I have received and agree to the Terms of Sale TOS-SASD.

***Signature:*** _____ ***Date :*** _____

# SOLAR ATMOSPHERES OF SAN DIEGO, INC.
# TERMS OF SALE

**Definitions**

A. BUYER is the person and/or entity purchasing the GOODS and/or SERVICES described in the SOLAR ATMOSPHERES OF SAN DIEGO, INC.'S QUOTATION.
B. SELLER is defined as SOLAR ATMOSPHERES OF SAN DIEGO, INC., the metal treater, providing the GOODS and/or SERVICES described in the QUOTATION.
C. GOODS include, but are not limited to, manufactured subassemblies, materials and/or products.
D. SERVICES include processing, but are not limited to, thermal processing, blasting with abrasive material, material and component testing, material transportation, and furnace repairs related to BUYER owned material and/or equipment.
E. SERVICED MATERIAL is BUYER supplied GOODS or materials provided to SELLER for the purpose of performing SERVICES.
F. QUOTATION is a written document provided by SELLER detailing the costs to BUYER and conditions for the GOODS and/or SERVICES to be processed.
G. ORDER or PURCHASE ORDER is the written document provided by BUYER to SELLER requesting GOODS and/or SERVICES to be processed.
H. TERMS OF SALE is defined as the contents of this document.
I. LIMITATION OF LIABILITY is as stated in the TERMS OF SALE.

**1. General**

All QUOTATIONS are provided in accordance with the TERMS OF SALE. All ORDERS by BUYER are subject to acceptance by SELLER. Acceptance of an ORDER is expressly limited to these TERMS OF SALE and the terms and conditions contained in the QUOTATION. Any additional or different terms and conditions contained in BUYER's ORDER or other response hereto shall be deemed objected to by SELLER and shall be of no effect nor in any circumstances binding upon SELLER unless expressly agreed otherwise in writing by SELLER.

**2. Quotation**

Unless previously withdrawn, SELLER's QUOTATION is open for acceptance for the period stated therein or when no period is stated, for 30 days from the date of SELLER's QUOTATION.

**3. Services And Goods**

All descriptions and illustrations contained in SELLER's brochures, price lists and advertisements, and all specifications, drawings and particulars of thermal processes and weights and dimensions contained therein that are submitted with any QUOTATION to BUYER or otherwise communicated to BUYER are intended merely to present a general idea of available SERVICES and/or GOODS and nothing contained in any of them shall form any part of the contract unless included in SELLER's QUOTATION.

**4. Price**

Unless otherwise specified in SELLER's QUOTATION, the price excludes the cost of delivery of SERVICES, SERVICED MATERIAL and/or GOODS. Price includes such taxes as payroll taxes, unemployment taxes and social security taxes of employees of SELLER. The prices quoted herein do not include any federal, state, or other taxes including duties or other import/export fees levied on the SERVICES, SERVICED MATERIAL or GOODS, or their use or sale. Such taxes, where SELLER is required by law to collect them, whether designated as sales tax, use tax, gross receipts tax, etc., will be billed to BUYER based on the law in effect at the time of delivery unless BUYER furnishes SELLER with a proper tax exemption certificate. BUYER agrees to reimburse SELLER for any such taxes that SELLER or its suppliers are required to pay. BUYER agrees to reimburse SELLER for any additional costs attributed to changes in the specifications, directions, or scope of the SERVICES (e.g. thermal processes), SERVICED MATERIAL and/or GOODS made at BUYER's request. SELLER will issue a supplementary QUOTATION to BUYER covering such changes and will not proceed with their implementation prior to receiving BUYER's approval.

**5. Variation, Delay And Cancellation**

If SELLER is prevented from proceeding with the ORDER by reason of delay or suspension by BUYER, any costs reasonably incurred by SELLER as a result of such events shall be reimbursable to SELLER. Any request by BUYER for deferral of delivery shall also result in additional costs which will be charged to BUYER. Upon BUYER's request, SELLER will complete the SERVICES, invoice BUYER and hold SERVICED MATERIAL and/or manufactured GOODS for BUYER at BUYER's risk and expense. If BUYER wishes to cancel the ORDER at any time, BUYER shall notify SELLER in writing. SELLER will make safe all partly finished SERVICED MATERIAL and/or manufactured GOODS and terminate all incomplete suborders and/or subcontracts. The costs of all work up to the time of cancellation, together with all costs incurred in making safe partly finished SERVICED MATERIAL and/or manufactured GOODS and any cancellation costs incurred by SELLER, plus a reasonable profit, will be charged to BUYER. Under such circumstances, finished or partly finished SERVICED MATERIAL and/or GOODS will become BUYER's property with the agreed terms of payment.

**6. Payment**

Terms of payment shall be as specified in the QUOTATION and, unless otherwise agreed, payment shall be made within 30 days from the date of invoice. No discounts shall be provided for payments earlier than 30 days. Late payments shall accrue interest at the rate of one and one half percent (1.5%) per month, or the highest interest rate allowable by applicable law, whichever is lower. BUYER shall pay all of SELLER's costs and expenses (including reasonable collection agency and attorney's fees) to enforce and preserve SELLER's right to collect all amounts payable by BUYER to SELLER. In addition, in the event that BUYER becomes delinquent in the payment of any sum due to SELLER, SELLER shall have the right to suspend performance under any ORDER until such delinquency is corrected. Partial shipments made under any ORDER shall be treated as a separate transaction and payment thereof shall be made accordingly. In the event of any default by BUYER, SELLER may decline to make further shipments without in any way affecting its rights under such ORDER or any other ORDERS or agreements between SELLER and BUYER.

**7. Pre-delivery Inspection/Tests**

All SERVICES, SERVICED MATERIAL and/or GOODS supplied pursuant to any ORDER will be subject to SELLER's standard inspection and test procedures prior to shipment together with any additional tests and/or inspection identified in SELLER's QUOTATION. Should BUYER require any additional testing or inspection, or request to be present during SELLER's standard testing, such attendance and any additional testing or inspection required by BUYER will constitute a change to the ORDER and all additional costs will be payable by BUYER.

**8. Delivery**

Unless otherwise stated in SELLER's QUOTATION, delivery dates are estimates only and are based, among other things, on the timely receipt of full and final technical information from BUYER. SELLER shall not be liable for any loss, liability, damages (whether direct, indirect or consequential) or other obligations because of any delay or failure to deliver all or any part of any ORDER for any reason, including, without limitation, SELLER's active or passive negligence or any cause beyond SELLER's control. SELLER shall be entitled to deliver the SERVICED MATERIAL and/or GOODS in one or more consignments unless otherwise expressly agreed. Delivery shall be deemed to take place when SELLER or its agent have delivered the SERVICED MATERIAL and/or GOODS to the point of delivery defined in the QUOTATION. Unless otherwise specified in SELLER's QUOTATION, BUYER shall be responsible and assumes all risk for unloading the SERVICED MATERIAL and/or GOODS at the point of delivery. If SELLER does not receive sufficient delivery instructions to enable it to dispatch the SERVICED MATERIAL and/or GOODS within 14 days of notification to BUYER that the SERVICED MATERIAL and/or GOODS are ready for dispatch, they shall be deemed to have been delivered for payment purposes.

**9. Passing Of Risk And Property**

Risk of loss of or damage to the SERVICED MATERIAL and/or GOODS and title to the GOODS shall pass to BUYER at the time the SERVICED MATERIAL and/or GOODS reach the delivery point defined as the shipping dock of SELLER's facility, unless a different delivery point is specified and agreed to in writing by SELLER. SELLER shall not be liable for any loss of any kind to BUYER arising from any damage to the SERVICED MATERIAL and/or GOODS occurring after the risk has passed to BUYER, however caused, nor shall any liability or obligation of BUYER to SELLER be diminished or extinguished by reason of such loss.

**10. Inspection Of Serviced Material And/Or Goods**

BUYER shall inspect the SERVICED MATERIAL and/or GOODS immediately on receipt thereof and shall within five (5) days give written notice to SELLER of any grounds on which BUYER alleges that the SERVICED MATERIAL and/or GOODS are damaged, defective or not in accordance with the TERMS OF SALE. If BUYER fails to give such notice, the SERVICED MATERIAL and/or GOODS shall be conclusively presumed to be in all respects in accordance with the contract and free from any defect that would be apparent on reasonable examination of the SERVICED MATERIAL and/or GOODS. BUYER shall be deemed to have irrevocably accepted the SERVICED MATERIAL and/or GOODS accordingly. Notwithstanding the foregoing, any use of the SERVICED MATERIAL and/or GOODS for any purpose after delivery, including further processing, assembly or any other work, shall constitute an irrevocable acceptance of the SERVICED MATERIAL and/or GOODS by BUYER.

No claims for shortage in weight or count will be entertained unless presented in writing within five (5) business days after receipt of SERVICED MATERIAL by BUYER. No claims will be allowed for shrinkage, expansion, deformity, or rupture of material in treating or straightening, except by prior written agreement, nor in any case for rupture caused by or occurring during subsequent processes. Whenever SELLER is given material with detailed instructions as to processing, SELLER's responsibility shall cease with the execution and completion of those instructions.

**11. Confidentiality And Intellectual Property Rights**

SELLER retains for itself all of its intellectual property rights in any supporting documentation supplied hereunder, including but not limited to, all designs, engineering details, thermal processes, furnace and manufacturing fixtures, and other data or information pertaining to any SERVICES, SERVICED MATERIAL and/or GOODS sold except where such rights are assigned under written agreement by an officer of SELLER. No title to or ownership of any SERVICES, manufacturing procedure, intellectual property or any parts thereof is transferred to BUYER by any delivery of such information to BUYER hereunder.

**12. Limited Warranty - Limitation Of Liability And Remedies**

BUYER of SERVICES, INCLUDING THE metal treating services DEFINED HEREIN, AND/OR GOODS RECOGNIZES that even after employing all OF the scientific methods known to SELLER, hazards still remain in metal treating. BUYER THEREFORE agrees that Seller'S liability AND REIMBURSEMENT TO BUYER shall not exceed twice the amount of the charges for the work PERFORMED on any material, GOODS OR SERVICED MATERIAL. BUYER agrees and understands that this LIMITATION OF LIABILITY is not an exculpatory clause. This is intended to reimburse BUYER for the charges and to fully compensate BUYER in the amount of the charges. This term applies to all work PERFORMED by Seller except where otherwise agreed to in a written agreement signed by an authorized OFFICER of Seller BEFORE WORK ON SERVICED MATERIAL IS STARTED OR SERVICES HAVE BEEN PROVIDED.

BUYER, BY CONTRACTING FOR METAL TREATING AND/OR OTHER SERVICES, AGREES TO ACCEPT THE LIMITS OF LIABILITY AS EXPRESSED IN THIS STATEMENT TO THE EXCLUSION OF ANY AND ALL OTHER PROVISIONS AS TO LIABILITY THAT MAY BE SET FORTH IN BUYER'S OWN INVOICES, PURCHASE ORDERS OR OTHER DOCUMENTS. IF BUYER PROPOSES ANY ADDITIONAL LIABILITY, BUYER UNDERSTANDS THAT A DIFFERENT CHARGE FOR SERVICES MUST BE AGREED ON, REFLECTING THE HIGHER RISK TO SELLER AND THAT NO WORK WILL BE STARTED UNTIL BOTH SELLER AND BUYER HAVE SIGNED AN AGREEMENT SETTING FORTH THE NEW CHARGES AND TERMS OF LIABILITY. OTHERWISE, THE TERMS SET FORTH HEREIN ARE BINDING ON BUYER.

IT IS AGREED BY BUYER AND SELLER THAT THE INABILITY TO DISCOVER A DEFECT WITHIN A REASONABLE PERIOD OF TIME AFTER THE RECEIPT OF A SHIPMENT OF HEAT TREATED MATERIAL AND/OR OTHER SERVICED MATERIAL, NOT TO EXCEED FIVE (5) BUSINESS DAYS, WILL NOT VOID THE LIMITATION OF LIABILITY CONTAINED IN THIS AGREEMENT. IT IS BUYER'S OBLIGATION TO NOTIFY SELLER IF IT DOES NOT AGREE TO THE LIMITATION OF LIABILITY CONTAINED HEREIN AND A FAILURE ON THE PART OF BUYER TO DO SO IN WRITING BEFORE WORK AND SERVICES START WILL BE DEEMED ACCEPTANCE OF THIS LIMITATION OF LIABILITY.

SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, AS TO THE PERFORMANCE CAPABILITIES OF THE MATERIAL, SERVICED MATERIAL AND/OR GOODS AS HEAT TREATED OR SERVICED BY OTHER METHODS. THE AFOREMENTIONED LIMITATION OF LIABILITY AS STATED ABOVE IS SPECIFICALLY IN LIEU OF ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, AND ANY OTHER SUCH OBLIGATION ON THE PART OF SELLER. THE ABUSE OR MISUSE OF ANY SERVICED MATERIAL OR GOODS (INCLUDING VACUUM FURNACES) BY BUYER VOIDS THIS WARRANTY AND RELEASES SELLER FROM ALL LIABILITY AND RESPONSIBILITY UNDER THESE TERMS OF SALE.

SELLER'S LIABILITY TO BUYER SHALL CEASE ONCE ANY FURTHER PROCESSING, ASSEMBLY OR ANY OTHER WORK HAS BEEN UNDERTAKEN BY BUYER OR ANY THIRD PARTY.

FAILURE BY BUYER TO INDICATE PLAINLY AND CORRECTLY THE KIND OF MATERIAL (E.G. PROPER ALLOY DESIGNATION) TO BE PROCESSED, 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. WHEN BUYER PROVIDES SPECIFICATIONS FOR THE PROCESS OR SERVICES TO BE PROVIDED, MAKES CHANGES IN THE KIND OF MATERIALS (E.G. PROPER ALLOY DESIGNATION) TO BE PROCESSED, OR CHANGES THE PROCESS TO BE USED, BUYER SPECIFICALLY UNDERSTANDS AND AGREES THAT THIS LIMITATION OF LIABILITY SHALL REMAIN IN EFFECT, BUT THAT ADDITIONAL CHARGES FOR SERVICES WILL BE DUE AND OWING TO COVER THE ADDITIONAL EXPENSE INCURRED AS A RESULT OF CHANGES MADE BY BUYER.

IT IS BUYER'S RESPONSIBILITY TO INFORM SELLER, IN WRITING ON BUYER'S ORDER (E.G. PURCHASE ORDER, CONTRACT, ETC.), IN THE EVENT THERE IS ANY GOVERNMENT MANDATED RESTRICTIONS, REGULATIONS, AND / OR LAWS REGARDING THE SERVICES TO BE PERFORMED BY SELLER. EXAMPLES OF SUCH GOVERNMENT MANDATED RESTRICTIONS, REGULATIONS AND LAWS ARE THE FEDERAL ACQUISITION REGULATIONS (FAR), DEPARTMENT OF DEFENSE (DFARS), INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) AND EXPORT ADMINISTRATION REGULATIONS (EAR). IN THE ABSENCE OF WRITTEN NOTIFICATION BY BUYER TO SELLER REGARDING APPLICABILITY OF ANY AND ALL GOVERNMENT MANDATED RESTRICTIONS, REGULATIONS AND LAWS, SELLER WILL NOT BE RESPONSIBLE TO COMPLY WITH SAME IN PERFORMING THE SERVICES ORDERED BY BUYER.

**Buyer agrees there will be no liability on Seller In contract or tort (including negligence and strict liabilitY) for any special, indirect or consequential damages FOR 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 AND/OR SERVICES performed by SelleR.**

**THIS SALE OF SERVICES AND/OR GOODS IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS, INCLUDING THE TERMS OF SALE CONTAINED ON THE FACE AND BACK OF SELLER'S DOCUMENTS. ANY DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY OF BUYER'S FORMS ARE HEREBY DEEMED TO BE A MATERIAL ALTERATION AND NOTICE OF OBJECTION TO THEM IS HEREBY GIVEN.**

**13. Excusable Delays**

SELLER shall not be liable for delays or failure to perform due, directly or indirectly, to (a) causes beyond SELLER's reasonable control, and (b) acts (including failure to act) of any governmental authority, wars, (declared or undeclared), electrical outages, strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, and epidemics).

**14. Indemnity By Buyer**

To the fullest extent permitted by law, BUYER shall indemnify and hold harmless SELLER from and against any and all claims, losses, damages, costs, expenses, suits, debts, actions, proceedings, causes of action, reasonable legal fees and liability of any kind that SELLER may incur, suffer, sustain, or be required to pay by reason of: (1) the injury to and/or the death of any person or the damage to any property whatsoever caused or alleged to have been caused in whole or in part by any act or omission of SELLER or any other responsible party; or (2) the failure of BUYER to perform, or to properly perform, its obligations. Without limiting the generality of the foregoing, this indemnity shall be deemed to cover claims by employees of BUYER, including claims for workers' compensation. BUYER agrees to waive any immunity under workers' compensation statutes and to indemnify SELLER for claims caused or alleged to have been caused solely or in part by the negligence of SELLER. If any action, suit or proceeding is instituted or any claim is asserted against SELLER that is covered by the indemnification provision, SELLER may give written notice thereof to BUYER and upon receipt of such notice, BUYER shall defend, using counsel acceptable to SELLER, against any such action, suit, proceeding or claim, paying all costs of defense, including attorney's fees.

**15. Insurance**

BUYER shall procure and submit to SELLER evidence of Comprehensive General Liability insurance coverage with limits of liability no less than One Million Dollars ($1,000,000.00). BUYER's insurance coverage shall be primary with respect to SELLER. Any insurance or self-insurance maintained by SELLER shall be in excess of BUYER's insurance.

**16. Notice of Dispute**

If, at any time, any dispute or question shall arise out of the contract or as to the rights or liabilities of the parties thereunder or in connection therewith or as to the construction or interpretation thereof either party shall give notice in writing to the other of the intent to file suit pursuant to the provisions herein regarding the proper applicable law, jurisdiction and venue.

**17. Proper Law**

These TERMS OF SALE, all QUOTATIONS, ORDERS and/or PURCHASE ORDERS are subject to the laws of the state of California and the laws of the state of California apply in any lawsuit or arbitration unless otherwise agreed to in writing by SELLER. If any provision of these TERMS OF SALE is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**18. Venue**

Any and all disputes arising between the parties shall be resolved in the Courts of San Diego County, State of California whether by arbitration or other legal proceedings.

**19. Assignment**

BUYER shall not assign any benefit under the contract without the consent in writing of SELLER which will not be unreasonably withheld.

**20. Clause Headings**

The clause headings used in these TERMS OF SALE are exclusively for reference purposes and in the interpretation of the subject clause the applicable clause title shall not act to limit, alter or otherwise affect the content of the clause.