



## General Terms and Conditions for PST Surface Treatment Services of Philos Surface Treatment (Shanghai) Co., Ltd.

PST Surface Treatment has been optimized to extend the life of your tooling in accordance with specialized surface treatment consulting and customization services provided by Philos Surface Treatment (Shanghai) Co., Ltd.

### 1. Terms and Conditions

#### 1.1

Terms and conditions set forth herein shall apply to any and all services to be performed by Philos Surface Treatment (Shanghai) Co., Ltd., or its affiliates, (collectively, Philos) and comprise all of the terms and conditions between Philos and its Customer.

#### 1.2

No other or different terms and conditions shall be applicable unless contained in a separate writing and signed by an authorized representative of Philos.

#### 1.3

This Agreement has superior effect over any other agreement signed Philos. Where there is any discrepancy or conflict between this Agreement and any other agreement, this Agreement shall prevail.

### 2. Offer and Acceptance

Quotations by Philos shall only be given in writing. Philos' quotation shall be construed as an offer to provide services upon the terms and conditions set forth herein, and shall be subject to withdrawal at any time prior to acceptance by Customer as provided for herein. Unless otherwise stated, all quotations shall be open for acceptance only within thirty (30) days of the quotation date. Acceptance by Customer of the quotation by Philos, and these terms and conditions, shall be deemed to have been made upon the receipt of the materials of the Customer upon which work by Philos is to be performed.

### 3. Prices

The prices quoted are firm for thirty (30) days except as may be adjusted for as provided for herein, but thereafter are subject to change without notice. All clerical errors in Philos' quotation, acknowledgment and invoices are subject to correction. Unless otherwise stated, the quoted price does not include any special handling, certifications, cleaning, testing, or packaging.

### 4. Taxes and Fees

Unless otherwise stated, any and all taxes or fees imposed by any federal, state, municipal or other governmental authority with respect to this transaction, and any and all duties, tariffs or otherwise shall be added to the price and paid by the Customer. In the event, that Philos pays such taxes, fees or otherwise the

Customer shall reimburse Philos.

### 5. Terms of Payment

#### 5.1

Unless otherwise stated, Customer shall pay Philos upon receipt of PST Surface Treated Material.

#### 5.2

Payments by Customer to Philos shall be made via wire transfer to:

Company Name: Philos Surface Treatment (Shanghai) Co., Ltd.

Bank Name: China Construction Bank, Shanghai Branch,

Zhujing Sub-branch

Account Number: 31001939300050014800

#### 5.3

If a payment period is stated in the quotation form, Customer shall make the agreed payment within such period. If Customer fails to make the payment in time, it shall pay 0.5% of the payable amount for each overdue day as penalty. If the delay of payment exceeds 60 days, Philos is entitled to choose either to cancel this sole transaction or to terminate all the agreements signed with Customer (including this Agreement and other framework terms and conditions previously signed by Philos). Meanwhile, Philos is entitled to claim for penalties aforementioned.



tioned and any actual loss or anticipated interest loss which is directly or indirectly caused by Customer's default.

#### 5.4

If it is stated in the quotation form that Customer shall make the Payments prior to Philos' delivery, in the event of Customer's delay of payment, Philos also has the right to claim for the penalties as set forth in Section 5.3. In the event that the delay of payment exceeds 60 days, besides the termination right of Philos provided as above, Philos is also entitled to the right of lien.in the following ways:

- (1) Philos is entitled to possess the materials;
- (2) Philos is entitled to collect fruits of materials;
- (3) Philos is entitled to claim for the storage costs during the retention period;
- (4) Philos is entitled to agree on another payment time with Customer. If Customer fails to fulfil the payment within such period, Philos is entitled to auction or sell the materials at market price and take the proceeds as compensation. If the proceeds cannot fully compensate the loss of Philos, Philos is entitled to claim for the remaining loss to Customer.

#### 6. Delivery of Material to Philos

##### 6.1

Unless otherwise stated, Customer is responsible for delivery charges (including shipping and insurance) to and from the Philos' surface treatment facility.

##### 6.2

Packaging for shipment to Philos: Secure packaging of the

material shipped to Philos is the responsibility of the Customer, and Philos will not be liable for any in transit damage caused by improper packaging. Philos will promptly notify the Customer of any damage caused during shipment.

##### 6.3

Packaging for return to the Customer: The cost of normal packaging of the material is included in the price and the method of packaging shall be at the sole discretion of Philos. Should Customer specify any special packaging or handling, any additional cost shall be added to the price.

##### 6.4

Customer shall be responsible for risk of loss while the material is being transported to or from Philos.

##### 6.5

Materials for PST Surface Treatment should be supplied free from rust, dirt, burrs, nicks, tooling marks, chips, debris, excessive oil, burn marks or other contaminants. Any prior surface treatment to materials must be notified in writing by Customer. The material substrate should be stated by the customer. Philos shall take no responsibility for poor surface treatment due to unsuitable material and/or incorrect information supplied by Customer. If Customer provides unsuitable material and/or incorrect information (including providing material outside an agreed upon specification or misidentifying the material substrate), the Customer will be charged for all processing and any damage resulting to Philos equipment.

##### 6.6

Customer shall ensure that the materials delivered to Philos do

not infringe any intellectual property rights owned by any third party. Customer shall hold Philos harmless against any claims by third parties and indemnify Philos for all the losses incurred by such claims, including but not limited to any goodwill damage.

#### 7. Time of Delivery: Reservation of the Right

##### of Installments

##### 7.1

All dates for completion of the work by Philos are approximate. Philos shall not be liable for any delays or default by reason of any occurrences beyond its control, including without limitation fire, flood, embargo, strike, failure to secure materials or labor from usual sources of supply, governmental restrictions considered "force majeure" or any other circumstances beyond Philos control.

##### 7.2

Philos reserves the right to make deliverables in installments, and all such installments may be separately invoiced at the sole discretion of Philos and paid for when due per invoice without regard to subsequent deliveries.

#### 8. Termination

If Customer for any reason terminates this agreement in whole or in part, the notice of termination must be in writing to Philos. Philos shall then cease all work and hold Customers materials, whether completed in full or in part, and Customer shall then pay to Philos an amount at least equal to

##### 8.1

the percentage of the price that is equal to the percentage of work completed plus



8.2 actual expenditures made by Philos in connection with the uncompleted portion of the work, including without limitation all cancellation charges paid by Philos for commitments made with respect to this order.

**9. Inspection by Customer:**

Limitation of Liability; Warranty

9.1

The Customer acknowledges that it will inspect the materials immediately upon receipt from Philos and shall notify Philos within ten (10) working days of the delivery by Philos, and in any event prior to the time any further processing, assembly or other work has been done on or with such materials, of any alleged damage, shortage deficit or otherwise. Failure by Customer to make any claim within such time shall constitute acceptance of the materials as intact and waiver of all such claims. No items shall be returned to Philos without the prior written approval of Philos.

9.2

Philos shall not be liable for

9.2.1

damage resulting from hidden contamination in the materials,

9.2.2

damage to materials as the result of hardness tests,

9.2.3

poor surface treatment due to incorrect or unsuitable information and/or material supplied by the Customer.

9.3

Philos will carry out its standard inspection procedures prior to the return of the materials. Philos does not warrant that all items are within the specification limits of hardness unless a 100% hardness test is requested in writing for which there shall be an additional charge.

9.4

Except as otherwise provided for herein, Philos agrees to re-surface treat any of the materials sent by Customer for PST if it is determined that any PST applied by Philos is defective in accordance with predetermined specifications or, alternatively, may at Philos' sole discretion, provide a credit for PST for future materials. This warranty will extend for a period of ninety (90) days from the date the materials are shipped to the Customer by Philos. This warranty is in lieu of any other warranties whether express or implied, including without limitation the implied warranties of merchantability and fitness.

9.5

The sole and exclusive remedies of the Customer shall be those as specifically set forth in this Section 9. Philos' maximum liability for any and all claims shall not in the aggregate exceed the price the Customer has paid to Philos pursuant to this agreement. Under no circumstances shall Philos be liable to the Customer or any third party for loss of business or profit or any other economic loss, or any incidental, special, indirect or consequential damages.

**10. Indemnifications**

Customer shall indemnify and hold Philos harmless from and against any and all actions, claims, demands, losses, damages or

otherwise arising out of or in any way connected with the use of the materials which are the subject of this agreement including those based in whole or in part on the default or negligence of Philos.

**11. Confidentiality and Protection of**

**Intellectual Property Rights**

11.1

Customer agrees that without any prior written consent of Philos, it shall not disclose any confidential information owned by Philos and its affiliates to any third party. Such confidential information includes without limitation to patents, patent applications, copyrights, trade secrets, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, software programs and software source documents, related to the current, future and proposed products and services of Philos and its affiliates, and also includes, without limitation, their respective information concerning research, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customers, customer lists, business forecasts, sales and merchandising, and marketing plans and related information.

11.2

Customer agrees that all confidential information shall be and remain the property of Philos and its affiliates and no present or future intellectual property rights or licenses are offered, granted or implied by Philos in the disclosure of any of the confidential information hereunder. Nothing in this Agreement shall be interpreted as an offer, grant or license of any right to directly or



indirectly manufacture any product or item by use of the Philos' and its affiliates' confidential information or to incorporate or use the such confidential information in any manner in Customer's business. Nothing in this Agreement shall prohibit Philos from disclosing its or its affiliates' confidential information to any third parties. For avoidance of doubt, any and all technology relating to surface treatment services and products provided or owned by Philos and its affiliates, including but not limited to, the Philos Surface Treatment, PST, and any and all improvements thereof, shall be and remain the exclusive property of Philos and its affiliates. This Agreement does not confer any licenses or any other rights of such surface treatment technologies, including but not limited to, the Philos Surface Treatment, PST, or any improvements thereof, to Customer.

#### 11.3

Customer agrees that it shall promptly disclose to Philos any information, inventions or discoveries (whether patentable or not), innovations, suggestions, ideas and reports, made or developed by Customer based on or as a result of the use of Philos' and its affiliates' confidential information. Customer shall not at any time without the prior written authorization of Philos, file, cause or authorize the filing of any patent application in any country with respect to any such inventions, discoveries or innovations which are the property of Philos and its affiliates. For avoidance of doubt, Customer shall promptly disclose to Philos any information, inventions or discoveries (whether patentable or not), innovations, suggestions, ideas and reports,

made or developed by Customer based on or as a result of the use of surface treatment services and products provided or owned by Philos and its affiliates, including but not limited to, the Philos Surface Treatment, PST, and any and all improvements thereof. Any such information, inventions or discoveries (whether patentable or not), innovations, suggestions, ideas and reports shall be and remain the exclusive property of Philos and its affiliates. This Agreement does not confer any licenses or any other rights of such information, inventions or discoveries (whether patentable or not), innovations, suggestions, ideas and reports to Customer.

#### 11.4

In the event where Customer breached the provisions above In this section, Philos shall be entitled to all legal and equitable remedies. Customer shall indemnify all the losses suffered by Philos and reimburse Philos all reasonable costs and legal fees (including but not limited to attorney's fees) incurred in seeking such remedies.

#### 11.5

Both parties agree that the provisions in this Section 11 shall be Independent from other provisions in this Agreement. In the event of invalidity of any provision in this Agreement, the validity of the provision in this section shall not be affected. The provisions in this section shall continue to survive after the termination of this Agreement.

#### 12. Applicable Law and Jurisdiction

The applicable law of this Agreement shall be PRC laws. Any

dispute arising out of or in relation to this Agreement shall be first settled by both parties through amicable negotiation. If negotiation fails, each party is entitled to submit the dispute to the competent court in Shanghai where Philos is Located.

#### 13. Additional Provisions

##### 13.1

If during the period of this agreement the financial condition of Customer, in the sole opinion of Philos, so warrants, Philos may require cash payment or additional security from Customer in advance before proceeding or shipment, may accelerate the date of any payment and may withhold performance or cancel this agreement, all without prejudice to any other lawful remedies. If shipment by Philos is delayed by Customer, payment shall be due in full when Philos is prepared to make shipment.

##### 13.2

The Agreement is written in English and Chinese. If there is any discrepancy between two language versions, the Chinese version shall prevail.

##### 13.3

This agreement shall be binding upon the representative, successors and assigns of each of the parties hereto.

**Philos Surface Treatment (Shanghai) Co., Ltd.**

**No369 Hong Zun Road Zone B Zhujing Industrial Zone**

**Zhujing Town Jinshan District Shanghai**



## 关于飞乐思金属表面科技（上海）有限公司表面处理服务的一般条款与条件协议

飞乐思金属表面科技(上海)有限公司为你提供专业定制的表面处理技术咨询。PST表面处理技术致力于优化并提升模具寿命。

### 1. 条款与条件

1.1 协议规定的条款和条件适用于所有由飞乐思金属表面科技（上海）有限公司及其关联公司（统称飞乐思）提供的服务，并包括所有飞乐思及其客户之间的条款和条件。

1.2 其它条款与条件不适用于本协议，除非是在此基础上另行起草并由飞乐思授权代表签署的文件。

1.3 本协议效力优先于其他任何由飞乐思签署的文件，如飞乐思另行签署的其他任何文件中的内容与本协议的内容不一致或相冲突，均应以本协议的内容为准。

### 2. 报价与接收

飞乐思必须提供并只承认书面报价。飞乐思的报价应被视为依据前述条款与条件而提供的一项服务，在客户确认接收前飞乐思可以随时撤销报价。除非另有说明，所有报价在提供报价日起三十（30）天内有效。若客户接受飞乐思提供的报价及交易条款与条件，将被视为飞乐思已经收到客户需要加工的产品并进行处理。

### 3. 价格

所报价格三十（30）天内不变，除非是条款与条件中所述为可调整的项目，如有更改，将不再另行通知。在飞乐思提供的报价中，所有文书、确认及发票上的错误都必须校正。除非另有说明，报价不包括任何快递、资质

认证、清洗、测试、认证、或包装。

### 4. 税费

除非另有说明，所有联邦、州、市或其他政府机构对本交易所征收的税费，以及所有进口关税，关税不包含在报价价格中，客户方需自行支付。交易中，若飞乐思支付了税费或其他费用，客户方应将费用偿还飞乐思。

### 5. 付款条件

5.1 除非另有说明，客户方应于收到表面处理完成的货物后立即向飞乐思支付费用。

5.2 客户可通过电汇方式向飞乐思支付费用：

公司名称：飞乐思金属表面科技（上海）有限公司

开户行：中国建设银行上海市朱泾支行

账户：31001939300050014800

5.3 如报价合同中书面约定了付款期限，则客户应在约定的付款期限内付款，如客户未能在约定的期限内付款，每逾期一天，应向飞乐思支付未付款项的0.5%作为违约金，如逾期付款超过约定的期限60天，则飞乐思有权选择决定单方取消本次交易抑或是整体解除与客户的全部协议（包括本次订立的协议以及之前所签订的框架性协议），同时飞乐思有权向客户主张依照前述计算方式计算的违约金以及任何直接或间接造成的实际损失或可得利益损失。

5.4 如报价合同中书面约定由客户先款，飞乐思后交货，在客户逾期付款的情况下，飞乐思亦可主张前款所述的违约金。如客户逾期付款超过60天，除前款所约定的解

除权外，飞乐思有权从以下几个方面享有对货物的留置权：

- (1) 有权合法地占有货物；
- (2) 有权收取货物的孳息；
- (3) 有权向客户收取留置期间所支出的保管费用；
- (4) 有权与客户另行约定留置货物后的履行付款义务的期限，如客户在约定的期限内仍未付款，飞乐思有权按市场价拍卖或变卖留置货物，就所得价款优先受偿，如仍无法弥补飞乐思的损失，则飞乐思有权另行向客户主张赔偿。

### 6. 交付产品给飞乐思

6.1 除非另有说明，客户方应负责往返于飞乐思表面处理工厂的运输费用（包括运费和保险）。

6.2 客户方装运：客户须对运送至飞乐思处货物的包装安全负责，飞乐思不会对运输过程中因包装不当引起的损毁负责。飞乐思会及时就装运期间造成的任何损毁通知客户。

6.3 返回客户方装运：材料的正常包装费用包括在价格中，包装方法由飞乐思进行裁量。若客户指定进行特殊包装或搬运，任何额外的费用将加到价格中。

6.4 客户须承担产品运送至飞乐思途中的损失风险。

6.5 用于PST 表面处理的产品不应生锈、蒙尘、有毛刺、裂纹、凿出的标记、缺口、碎片、过度上油、烧痕或其他污染物。若产品曾进行过任何其他表面处理，客户方须予以书面通知。客户应当对产品品质进行说明。飞乐思不会对因客户提供不适合产品和、或不正确信息而造

关于飞乐思金属表面科技（上海）有限公司表面处理服务的一般条款与条件协议



成的表面处理效果不佳付任何责任。如果客户提供不适合产品和、或不正确信息（包括提供不是由双方确认并说明的基质或错误识别产品基质），客户需要为整个工程支付费用，并为任何飞乐思设备的损坏支付费用。

6.6 客户保证交付给飞乐思的产品不存在侵犯第三方知识产权的情形，如飞乐思因客户交付的产品被第三方追究责任，客户有责任使飞乐思免于承担任何责任，并赔偿飞乐思因此遭受的全部损失，包括但不限于商誉损失。

#### 7. 交货时间：保留分期交货的权利

7.1 飞乐思所需工时均为近似值。飞乐思将不对因超出其控制范围的原因而造成的任何延误或违约负责，包括但不限于火灾、水灾、禁运、罢工、未能保证正常原材料或人力供应、被视为“不可抗力”的政府限制或超出飞乐思控制的任何其他情况。

7.2 飞乐思保留分期交货的权利，每期分期交货的货物，飞乐思将分别逐次提供发票，客户方需依照发票及时付款。

#### 8. 终止

如果客户因任何原因终止全部或部分协议，终止通知必须以书面形式给飞乐思。飞乐思停止一切工作，并保存客户的产品。全部或部分完成的部分，客户应支付飞乐思的数额至少等于

8.1 相当于完成工作的百分比的价格，加上；

8.2 飞乐思为未完成部分所支出的实际金额，包括但不限于飞乐思就取消订单所支付的全部注销费。

#### 9. 客户验收

责任限制；保修

9.1 客户承诺在收货后马上验收，并在最迟收货10个工作日内回复验收结果。在进一步加工、装配或进行其他作业前，知会飞乐思货物是否有损坏、短缺、及其它问题。若规定时间内没有提出异议，将被视为接受并同意货物完好，同时放弃所有主张货物瑕疵的权利。任何退还飞乐思的物品，需提前得到飞乐思的书面同意。

9.2 飞乐思将不负责

9.2.1 因隐瞒原材料被污染而造成的损毁，

9.2.2 由于硬度测试对材料的损毁，

9.2.3 因客户提供原材料信息不正确，或不恰当而造成表面处理结果不佳造成的损失。

9.3 飞乐思将在材料返回前进行标准检查工序。飞乐思不保证所有物品均在硬度规格限制之内，除非被以书面形式要求100%硬度试验，硬度测试需额外收费。

9.4 除另有规定外，如果飞乐思所作 PST表面处理被认定有缺陷，飞乐思 同意为客户重新做表面处理，或者，飞乐思可全权决定，以便为将来材料 的PST 提供信誉。此保修在材料由飞乐思装运到客户那日起将延长九十（90）天。此保修代替任何其他明示或暗示的担保，包括但不限于隐含的 适销性和适用性保证。

9.5 对客户的补救措施已明确规定在第9 部分。根据该协议，飞乐思的任何及所有索赔的最大责任总额不得超过客户已支付飞乐思的价格。在任何情况下，飞乐思将不对客户或任何第三方的业务或利润损失，或任何其他经济损失，或任何附带的，特殊的，间接的或后果性的损害负赔偿责任。

#### 10. 赔偿

客户应赔偿并保证飞乐思不会因产品加工中部分或全部

过失或失职而对产品使用中的问题对其诉讼、索赔、要求、损失、损坏。

#### 11. 保密与知识产权保护

11.1 客户同意其在未经飞乐思书面授权的情形下，不应向任何第三方披露任何属于飞乐思及其关联公司的保密信息，该保密信息包括但不限于与飞乐思及其关联公司现在或将来或计划的产品和服务相关的专利，专利申请，版权，商业秘密，工艺，概要，样图，模型，发明，技术秘密，流程，仪器，设备，软件程序，软件源代码文件。同时，还包括但不限于与前述信息相关的研究，开发，设计细节及规格，工艺，财务信息，采购条件，采购，生产，客户，客户名单，商业预测，销售，经销，市场计划相关的信息。

11.2 客户同意飞乐思的保密信息应当仍然归其及其关联公司所有，飞乐思对任何保密信息的披露均非对任何现在或未来的知识产权的权利或许可作出要约、进行授权或暗示。除飞乐思书面明确表示外，本协议的任何内容不应被解释为飞乐思直接或间接地给予、授予或许可客户利用保密信息加工产品，或者在其业务中以任何形式利用该等保密信息的权利。本协议不影响飞乐思向第三方披露其自有保密信息的权利。为免疑问，飞乐思及其关联公司拥有的或提供的任何及全部有关表面处理的服务及产品的技术，包括但不限于，飞乐思表面处理、PST、以及其任何及全部的改进，应当依然是飞乐思及其关联公司的排他财产。本协议没有就该等表面处理技术，包括但不限于飞乐思表面处理、PST、 以及其任何及全部的改进，授予客户任何许可或其他权利。

11.3 客户同意其通过使用或者基于飞乐思及其关联公司

关于飞乐思金属表面科技（上海）有限公司表面处理服务的一般条款与条件协议



的保密信息作出或发展的任何信息、发明或者发现（无论能否申请专利）、创新、建议、创意、报告的，应立即披露给飞乐思。未经飞乐思的书面授权，客户在任何时候，任何国家或地区都不得对该等发明，发现或创新申请专利，或促使或授权他人申请专利，该等发明，发现或创新属于飞乐思的财产。为免疑问，客户通过使用或者基于飞乐思及其关联公司拥有的或提供的任何及全部有关表面处理的服务及产品的技术，包括但不限于，飞乐思表面处理、PST、以及其任何及全部的改进，而作出或发展的任何信息、发明或者发现（无论能否申请专利）、创新、建议、创意、报告，应当立即向飞乐思披露。任何该等信息、发明或者发现（无论能否申请专利）、创新、建议、创意、报告，应当依然是飞乐思及其关联公司的排他财产。本协议没有就该等信息、发明或者发现（无论能否申请专利）、创新、建议、创意、报告授予客户任何许可或其他权利。

11.4 如果客户违反上述保密及知识产权保护相关条款的规定，飞乐思有权享有法律所赋予的全部救济，客户应赔偿飞乐思因此遭受的全部损失以及所有因寻求救济而发生的所有合理支出和法律费用（包括但不限于律师费及诉讼费）。

11.5 双方同意，该 11 部分的条款独立存在。其他条款被认定无效的，不影响该部分条款的效力。本协议解除或终止的，该部分的条款应持续有效。

## 12. 适用法律和管辖

本协议应适用中华人民共和国法律。发生纠纷时，双方应首先通过友好协商进行解决，如协商不成，则任何一方均有权向飞乐思住所地上海有管辖权的人民法院提起

诉讼。

## 13. 附加条款

13.1 如果在此协议期间客户的财务状况出现问题，以飞乐思的唯一意见看来，飞乐思可能要求客户在继续或装运之前以现金支付或预先从客户方追加保证金，可提前付款日期，并或取消此协议，寻求法律赔偿。若因客户方原因延误发货，客户方需在飞乐思发货前付清全款。

13.2 本协议语言为中文和英文。如两种语言版本有矛盾之处，以中文版本为准。

13.3 本协议对各方代表，继承人和每个当事人，应具有约束力。

**飞乐思金属表面科技（上海）有限公司**

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