



THERMACO LIMITED – TERMS & CONDITIONS OF SALE

1. GENERAL

- a) In these Conditions, "the Company" is Thermaco Limited (Company no. 01414038) whose registered office is situated at Enigma Business Park Sandy's Road Malvern Worcestershire WR14 1JJ, "the Customer" is the individual firm, company or other party with whom the Company contracts, "the Contract" is any contract for the sale of goods or for work and materials howsoever made between the Company and the Customer, "the Contract Rate" is the rate of 4% above the base rate from time to time of Barclays Bank Plc, "the Company Works" is the Enigma Business Park Sandy's Road Malvern Worcestershire WR14 1JJ and "Special Goods" are all goods made specifically to the Customer's specifications and designs.
- b) The Contract is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.
- c) These Conditions shall be deemed to supersede any previous Conditions.

2. QUOTATIONS

- a) Any quotation given by the Company is an invitation to the Customer to make an offer only and no order of the customer placed with the Company in pursuance of a quotation or otherwise shall be binding on the Company unless and until it is accepted in writing on the Company's acceptance of order form.
- b) Any quotation is valid for a period of 60 days only from its date (unless otherwise agreed).
- c) The Contract shall incorporate and be subject to these Conditions according to their provisions, the only terms of the Contract shall be those contained expressly or by reference in the Company's acceptance of order form and any representation or warranty, written or oral made or given prior to the Contract is excluded unless expressly incorporated and in the event of the Customer seeking to incorporate special conditions into the Contract, such special conditions shall not apply unless they are accepted and agreed by the Company in writing.
- d) In the event that no quotation or written acceptance of orders is given by the Company and the Company has received an order from the Customer, and provided that the Customer shall have notice of these conditions, in such circumstances all goods and materials are supplied and all work is done subject to these Conditions.

3. PRICES

Unless otherwise provided in the Contract:-

- a) The price of goods, work or materials is exclusive of Value Added Tax which will be charged at the rate applicable at the relevant tax point.
- b) The price does not include the cost of offloading the goods or materials which shall be arranged by the Customer and performed at his risk and expense and, if the Customer instructs the Company to send the goods or materials by passenger train, parcel post, airfreight or other commercial transport the additional cost will be for the account of the Customer.
- c) The prices quoted in the Company's quotation are related to the costs to the Company of labour, materials, carriage and the levels of any applicable taxes, customs or other duties at the date of the quotation, and if there is a rise in such costs or levels after the date of quotation (including a rise caused by the devaluation or revaluation of any currency) the prices shall be adjusted accordingly whether or not such increase was or should have been foreseeable by the Company. Goods will be invoiced at the prices ruling at the date of despatch.
- d) The Company will not accept cancellation of an order or the return of goods for credit unless the Company has previously agreed in writing to do so. Where agreement has been reached, the Company reserves the right to charge the Customer the amount of any losses or expenses incurred or materials used plus a reasonable allowance for overhead charges and profits.

4. DELIVERY AND RISK

- a) The risk in respect of all goods supplied under the Contract shall pass to the Customer upon the goods being delivered to the Customer as provided in the Contract or in accordance with the Customer's delivery instructions but notwithstanding such delivery, the property in the goods shall not pass to the Customer except as provided in Condition 5 unless otherwise agreed in writing. The Company shall on behalf of the Customer and at the Customer's expense arrange for the carriage of the goods and the carrier selected by the Company shall be the agent of the Customer. Delivery to the carrier will, in such circumstances constitute delivery to the Customer. The Company shall not be liable for any damage or loss occurring after the goods have been delivered to the Customer as aforesaid.
- b) Where damage or loss occurs to the goods before delivery thereof to the Customer in accordance with paragraph 4a above, the Company undertakes to replace or (at its discretion) to repair free of charge any goods damaged or lost in transit to the contracted place of delivery in which event the time for delivery of the damaged or lost goods shall be extended for such period as the Company shall reasonably require for such replacement or repair.
- c) Conditions precedent to the Company's undertaking to repair or replace under paragraph 4b above are:
 - (i) that the Customer shall have given written notice of such damage or loss with reasonable particulars thereof to the Company and to the carrier if other than the Company within three days of the receipt of the goods or in the case of total loss within fourteen days of receipt of the Company's or the carrier's delivery advice or other notification of despatch and
 - (ii) that the Customer, if requested by the Company to do so, shall have returned in the case of damaged goods such goods to the Company's Works within one month or receipt thereto.
- d) Save as expressly provided in this Condition, the Company shall not have any liability whatsoever or in connection with any damage to or loss of the goods in transit to the contracted place of delivery.
- e) Where the goods are not manufactured by the Company and are delivered direct to the customer by, or collected by the Customer from, the manufacturer the Company shall not be liable for any loss or damage to the goods whatsoever or whensoever occurring.

5. PROPERTY

Until the purchase price of the goods or work and materials comprised in this or any other contract between the Company and the Customer shall have been paid or satisfied in full:-

- a) The goods and/or materials comprised in this Contract shall remain the property of the Company (notwithstanding the delivery of the same and the passing of the risk therein).
- b) The Company may at any time recover and resell the goods and/or materials (if in the Customer's possession or under its control) any of the events specified in Condition 17 thereof shall occur and any sum owed by the Customer to the Company under this Contract or any other contract is not paid on the due date and for this purpose the Company, its servants or agents together with the appropriate transport may enter upon the Customer's premises where the goods and/or materials are situated or to remove or otherwise take back into the Company's possession the goods and/or materials.
- c) The Customer shall possess all goods and/or materials comprised in the Contract as bailee of the Company and, if the Company so requires, the Customer shall store such goods and/or materials for the Company in a proper manner separately from all other goods in its possession without charge to the Company and so that they are identified as belonging to the Company.
- d) The Customer has the right to dispose of the goods and/or materials in the ordinary course of its business for the account of the Company and to pass good title in the goods and/or materials to its customer being a bona fide purchaser for value without notice of the Company's rights, but the Customer's right of re-sale shall automatically cease upon the occurrence of any of the events referred to in paragraph 5b above.
- e) In the event of any such disposal by the Customer the proceeds of sale shall be held by the Customer in trust for the Company but the Customer shall be entitled to retain for himself therefrom any excess over the amount outstanding under this Contract or any other Contract. In addition the Company is entitled to recover directly from the Customer any such proceeds of sale unpaid by the customer provided that the company shall return to the Customer any monies recovered in excess of the amount then owed by the Customer to the Company (the Company being entitled to deduct from such excess the costs and expenses incurred by it in the recovery of such monies). Nothing in this Condition 5 shall
 - (i) entitle the Customer to return the goods and/or materials or to delay payment therefore or
 - (ii) constitute or be deemed to have constituted the Customer as the Agent of the Company otherwise than for the purposes of the Condition 5; or
 - (iii) render the Company liable to the third party for any representation or warranty made or given by the Customer to any third party in relation to the goods and/or materials unless the Company shall have authorised the Customer so to do in writing.

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6. PERFORMANCE

- a) The Company will use all reasonable endeavours to comply with any date or dates for despatch or delivery of the goods or completion of the work (as the case may be) as stated in the Contract, but, unless the Contract otherwise expressly provides, if, notwithstanding that the Company has used all reasonable endeavours, the Company fails to despatch or deliver the goods or to complete the work by such date or dates, such failure shall not constitute a breach of the Contract and the Customer shall not be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.
- b) If the Company shall be prevented or hindered from supplying the goods or any part thereof or from installing or commissioning the same or completing the work in accordance with the Contract by any circumstances beyond its reasonable control, further performance of the Contract shall be suspended for so long as the Company is so prevented or hindered, provided that in the event that the performance of the Contract shall be suspended for more than six consecutive calendar months the Customer shall be entitled by notice in writing to the Company forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract Rate for all goods supplied and all work done and materials used by the company to the actual date of such termination. The Company shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform its obligations under the Contract in the aforementioned circumstances.
- c) If no time for delivery or completion is specified in the Contract, the Customer shall be bound to accept the goods and/or the work when the same are ready for delivery by the Company or is completed (as the case may be) but the Company shall be under no obligation to deliver or complete the same until the expiry of a reasonable time from the date of the Contract.
- d) When expedited delivery or completion is agreed by the Company and necessitates overtime or additional costs the Customer shall reimburse the Company for the amount of such overtime payments or other costs. Where postponement of delivery or completion is agreed by the Company the Customer shall if required by the Company pay any costs and expenses (including a reasonable charge for storage of the goods and/or materials occasioned thereby) but the goods, materials and/or the work shall be held at the Customer's risk as from the time of postponement until 90 days.
- e) Should work be suspended at the request of or delayed through any default of the Customer for a period of thirty days or more the Company shall then be entitled to payments at the Contract Rate for work already carried out, materials specially ordered and any other additional costs thereby incurred (including storage) and a certificate of the Company's auditors certifying such amounts shall be conclusive and binding on the Customer and the Company.

7. PAYMENT

- a) Unless the Contract provides otherwise, payment for the goods or work and materials shall be due not later than the last day of the month following the date of the relevant invoice unless at any time the Company gives notice in writing to the Customer requiring earlier payment, in which case payment shall be due on such other date (being not less than 7 days after the date of the notice) as may be stated in the notice.
- b) The time stipulated for payment shall be of the essence of the Contract and failure to pay on or before the due date shall entitle the Company by notice in writing to the Customer to suspend further deliveries of the goods and materials or performance of the work pending payment (without prejudice to any other right or remedy available to the Company).
- c) Without prejudice to any other right or remedy the Company may have, the Company shall be entitled to charge interest (from the due date until payment is made in full) at the Contract Rate.
- d) Unless otherwise agreed in writing by the Company the Customer will not be entitled to set off against any sums due to the Company under the Contract any amount claimed by or due to the Customer from the Company whether under the Contract or on any other account.

8. DRAWINGS AND SPECIFICATIONS

- a) Unless it is expressly stated in the Contract that any figure or statements therein or in the Company's catalogues or in any relevant drawings or other documents supplied by the Company as to the performance of the Contract goods or any work (as the case may be) are guaranteed to be accurate, such figures and statements shall be approximate. Neither does the Company guarantee that the illustrations, weights and dimensions specified in such catalogues will in all cases be identical with the Contract goods or the work due to improvements and modifications to the goods or work or their specifications that may be made from time to time. The Company will use its reasonable endeavours to notify the Customer of any material alterations to any standard specifications relating to the Contract goods or work.
- b) In the Contract the Company expressly guarantees the accuracy of such performance, figures or statements then in the event of the goods or work after commissioning failing to achieve and comply with the same, the Company shall thereafter be entitled to a reasonable period of time and to reasonable facilities to enable it to bring the goods or work up to the guaranteed standard of performance and the contractual time for delivery of the goods or completion of the work shall be extended for such reasonable period of time.
- c) If by the Contract the Company undertakes only that the goods or works will comply with such performance figures or statements subject to the margins stated in these Conditions, then in the event of the goods or works after commissioning failing to achieve and comply with such undertaking, the Company shall thereafter be entitled to a reasonable period of time and to reasonable facilities to enable it to bring the goods or work up to such reasonable standard of performance and the contractual time for delivery of the goods or completion of the work shall be extended for such reasonable period of time.
- d) All plans, drawings, designs, specifications and other written technical material forming part of the Contract or supplied in connection therewith shall remain the property of the Company and shall not be copied or disclosed to any third parties without the prior written consent of the Company. The Customer shall return the same to the Company forthwith upon request by the Company to do so.

9. TESTS

If the Customer requests specific tests and/or inspection of the Contract goods or work, such tests and/or inspection are to be, in the case of goods, at the Company's premises or, in the case of work, at the Company's premises or on site as the case may be. If requested in writing, arrangements will be made for the Customer's representative to observe such tests and inspection. The Customer will be deemed to have accepted goods as satisfactory after the satisfactory completion of such tests and inspection.

10. CONTRACTS FOR WORK

If the Contract is for and includes work to be done by the Company whether of installation, commissioning, repair, rectification or improvement, then, unless the Contract otherwise provides, the following additional provisions shall apply thereto:

- a) The Company shall be obliged to carry out such work only during the Company's normal working hours. If the Customer requests that overtime be worked and the Company agrees thereto such overtime shall be paid for by the Customer at the rate current in the trade and locality where such work is carried out concerned and a certificate of the Company's auditors certifying the amount payable for such overtime shall be conclusive and binding on the Customer and the Company.
- b) If the work is to be done by the Company at the premises of the Customer or at the Customer's request at the premises of any other person then the Customer undertakes to provide or to procure the provision of:
 - i) proper and safe storage and protection of all goods, tools, plant and equipment and materials on site.
 - ii) free and safe access to the site and to the point at which the work is to be executed.
 - iii) all facilities and services necessary to enable such work to be carried out safely and expeditiously: and
 - iv) if such work includes the installation of any goods, all builder's work, foundations, cutting away and making good required and the ready availability of all plant and equipment so as to permit the goods to be tested forthwith on completion of such work.
- c) The Customer shall pay to the Company the amount of any expenses incurred by the Company by reason of any breach by the Customer of any of the Customer's undertakings in paragraph 10(b) above (but without prejudice to the Company's right to recover further damages therefore) and a certificate of the Company's auditors certifying such amounts shall be conclusive and binding upon the Company and the Customer.

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11. WARRANTY

- a) The Company will make good by repair or correction or at the Company's option by replacement or renewal defects which appear in the goods or work and materials within twelve months after the goods have been delivered or the work completed and arise solely from faulty materials or workmanship. This obligation on the part of the Company is conditional upon the Company receiving written notice within a reasonable time from the Customer of such defect and the Customer, if required by the Company, returning the goods to the Company carriage paid.
- b) Any repair or rectification of goods undertaken by the Customer must only be done with the prior consent in writing of the Company.
- c) This warranty shall extend only to items manufactured by the Company but, in the event of items incorporated in the Company's products but not manufactured by the Company being defective, the Company will use its reasonable endeavours to ensure that such items are repaired or replaced free of charge under the terms of any warranty given by the supplier of such items to the Company.
- d) Subject as hereinafter mentioned, the above warranties are given in lieu of all other conditions or warranties of quality or fitness for purpose which are hereby excluded together with any liability, tortious or contractual, for any loss (including consequential loss) resulting from any defect in the goods or work and/or materials,
- e) Nothing in these Conditions shall limit the liability of the Company in respect of death or personal injury resulting from negligence on the part of the Company or limit the rights of the Customer under the Unfair Contract Terms Act 1977 or, where the Customer is dealing with the Company as a consumer, the rights of the Customer under sections 13, 14 and 15 of the Sale of Goods Act 1979 (as amended): provided that where the Customer is not dealing with the Company as a consumer, the liability of the Company shall (except in respect of death or injury as aforesaid) in all cases be limited to the total Contract price.

12. SPECIAL GOODS

- a) The Company reserves the right to supply more or less than the exact quantity ordered in the case of the Special Goods such overs and shortages to be charged for or deducted pro rata.
- b)
 - (i) The Company shall be entitled to reject any materials supplied or specified by the Customer which the Company in its absolute discretion considers unsuitable. Additional costs incurred by the Company, if such materials are deemed to be unsuitable, will be charged to the Customer on an indemnity basis
 - (ii) Quantities of materials supplied by the Customer shall be adequate to cover normal spoilage.
- c) The Customer represents and warrants to the Company that neither the Special Goods nor the manufacture thereof by the Customer will infringe any patent, copyright, registered design, trademark or other proprietary right of any third party and the Customer further undertakes to indemnify the Company against all actions, proceedings, costs, claims and expenses whatsoever in respect of any infringements by the Company of any patent, copyright, registered design, trademark or any other proprietary right in the execution and performance of the Contract.

13. CALL OFF ORDERS

In this clause:

- a) "a Call Off Order" is an order placed by the Customer with the Company, where a specific quantity of goods is required by the Customer for delivery by the Company within a defined period of time, which shall be agreed between the Company and the Customer at the time that the order is placed, which is then held in stock by the Company at the Company Works.
- b) "a Call Off " is where the delivery is to be made to the Customer at such time or times and in such quantities as the Customer may from time to time request.
- c) where the first Call Off has not been taken by the Customer within three months (or such period of time as shall be agreed between the Company and the Customer at the time the order is placed) from the start date of the Call Off Order, the Company reserves the right to deliver the first Call Off. The Customer then has a further twelve months in which to take delivery of the balance of the Call Off Order.
- d) if the Customer has failed to take delivery of all the goods comprised in the Call Off Order within 15 months (or such period of time as shall be agreed between the Company and the Customer at the time the order is placed) from the start date of the Call Off Order, the Company shall have the right to invoice the Customer for the balance of the Call Off Order regardless of whether the Customer agrees to accept delivery of the goods, such invoice to be payable within the agreed payment terms.

14. CUSTOMERS PROPERTY

All property supplied by the Company by or on behalf of the Customer which is held by the Company for the purposes of the Contract or which is in transit to or from the Customer, shall be deemed to be entirely at the Customer's risk and the Company shall not be liable for any loss of or damage to such property whilst in the possession of the Company or in transit as aforesaid unless such loss or damage is due directly to the negligence of the Company its servants or agents. In no circumstances whatsoever will the Company be liable for any consequential loss or damage arising therefrom. The Customer shall insure all such property for all risks.

15. LIEN

Without prejudice to any other remedies which the Company either has or may have, the Company shall in respect of all debts due and payable by the Customer to the Company have a general lien on all goods and property belonging to the Customer in its possession (whether worked or not) and shall be entitled upon the expiration of 14 days notice in writing to the Customer to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

16. HEALTH AND SAFETY

The attention of the Customer is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974 (as amended). The Company will make available upon written request such information of the design, construction and installation of the goods as is in its possession to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used. Such information may also be found in the relevant British Standard Specifications, codes of practice and regulations, catalogues and products leaflets produced by the manufacturers or may be obtained by specific request from the manufacturers concerned.

17. INSOLVENCY AND BREACH OF CONTRACT

In the event that:

- a) the Customer shall commit any breach of the Contract and shall fail to remedy such breach (if capable of remedy) within a period of 30 days from receipt of the notice in writing from the Company requesting such remedy; or
- b) any distress or execution is levied upon any of the goods or property of the Customer;
- c) or the Customer offers to make any arrangements with or for the benefit of its creditors or commits any act of bankruptcy or, being a limited company, has a Receiver appointed of the whole or any part of its undertaking, property or assets; or
- d) an administration order is made in relation to the Customer or an order is made or resolution is passed or analogous proceedings are taken for the winding up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Company).

The Company shall thereupon be entitled without prejudice to its other rights hereunder, forthwith to suspend all further deliveries until the default has been made good or to determine the Contract or any unfulfilled part thereof or at the Company's option to make partial deliveries, Notwithstanding any such termination, the Customer shall pay the Company at the Contract Rate for all work done materials used and goods delivered up to and including the date of termination.

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18. SEVERANCE

If at any time anyone or more of the provisions of these Conditions becomes invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby,

19. LAW

These Conditions and each and every contract made pursuant thereto shall be governed by and construed in all respects in accordance with the laws of England.

20. ARBITRATION

All questions, disputes or controversies whatsoever arising out of or in relation to or in connection with any contract or any goods supplied or work performed under any contract shall if not settled by agreement be referred to the arbitration of a person appointed by the Company and the Customer or in default of such appointment shall be referred on the application of either party to the arbitration of a person appointed by the President of the Law Society for the time being, and the arbitration shall be subject to the Arbitration Act 1950 and any modification or re-enactment thereof.

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

22. TRANSLATIONS

All Contracts shall be subject to these Conditions in English. The Company does not accept responsibility for any alteration or translation of these Conditions into another language.

Company:

The Customer hereby accepts these Conditions:

Address:

Signature:

Date:

Print Name:

Position in Company:

A signed copy of these Conditions are to be returned to Thermaco Limited (Company No. 01414038) whose registered office is situated at Enigma Business Park Sandy's Road Malvern Worcestershire WR14 1JJ