

Conditions of Sale

- 1 **Interpretation**
- 1.1 In these Conditions:
- "Customer" means the person named in the Specification to whom the Company has agreed to supply the Services and/or the Goods in accordance with the Conditions
- "Charges" means the charges for the Goods and/or the Services set out in the Specification
- "Goods" means such goods (including any instalment of the goods or any parts for them) as the Company is to supply in accordance with these Conditions
- "Company" means Thermodynamix Thermoforming Specialist Services Limited
- "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company
- "Contract" means the contract for the provision of the Services and/or purchase and sale of the Goods
- "Services" means the services to be provided by the Company for the Customer set out in the Specification
- "Specification" means the written specification of the Goods or Services to which these Conditions are attached
- "Excess" means any material constituting part of the Goods and/or any other goods that the Company has supplied to the Customer under another contract and which the Company has or does agree to repurchase from the Customer in accordance with clause 4.1
- "Loss" means any and all loss, damages, costs and expenses (including loss of profit, loss of business or depletion of goodwill) and in each case whether direct, indirect or consequential.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 2 **Basis of the sale**
- 2.1 The Company shall supply the Services and/or the Company shall sell and the Customer shall purchase the Goods subject to these Conditions.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this in this clause shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.3 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customers own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.4 The Company may correct without liability any typographical, clerical or other error or omission in the Specification or any sales literature, invoice or other document or information.
- 3 **Orders and specifications**
- 3.1 The quantity, quality and description of and any specification for the Goods and/or the Services shall be those set out in the Specification.
- 3.2 The Customer shall be responsible to the Company for ensuring the accuracy of the Specification and it shall be deemed that the Specification has been approved by the Customer unless the Company receives written notice to the contrary within 5 days of its receipt by the Customer.
- 3.3 The Company reserves the right on giving notice in writing to the Customer to make any changes in the Specification which are required to conform with any applicable statutory or EC requirements but shall not be under a duty to ensure that the Specification complies with such requirements.
- 3.4 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all Loss incurred by the Company as a result of cancellation.
- 4 **Re-purchase of Excess**
- 4.1 The Company agrees to repurchase from the Customer any Excess specified in the Specification and/or any Excess that the Company and Customer agree in writing shall be repurchased by the Company under the Contract from time to time.
- 4.2 The Company shall be entitled to notify to the Customer in writing from time to time of any additional terms and conditions that it deems reasonably necessary in relation to the repurchase of any Excess under the Contract and any such terms and conditions shall be deemed to form part of these Conditions.
- 4.3 In the respect of any Excess that the Company repurchases from the Customer under the Contract, the Customer warrants that the Excess will not contain any material or objects other than the Goods.
- 4.4 The Customer shall indemnify the Company against all Loss incurred by the Company arising out of or in connection with the Customer's breach of the warranty at clause 4.1
- 5 **Charges**
- 5.1 Subject to any special terms agreed, the Customer shall pay the Charges as set out in the Specification for the Goods and Services supplied plus any additional costs or expenses which are incurred by the Company which in the Company's sole discretion are deemed to be required as a result of the Customers lack of instructions, the inaccuracy of any data or information supplied by the Customer, or any change in any material particular of the Specification, or any other cause attributable to the Customer.
- 5.2 Except as otherwise stated in the Specification, all prices are given by the Company in respect of the supply of Goods on an ex works basis, and where the Company agrees to deliver Goods otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 5.3 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.
- 5.4 The cost of pallets and returnable containers will be charged to the Customer in addition to the price of the Goods, but full credit will be given to the Customer provided they are returned undamaged to the Company before the due payment date.
- 6 **Terms of payment**
- 6.1 The Company shall be entitled to invoice the Customer for the Charges at such times as are set out in the Specification or otherwise at any time after the Services have been provided or the Company has notified the Customer that the Goods are ready for collection or otherwise tendered delivery of the Goods in accordance with the Contract.
- 6.2 The Customer shall pay the Charges within 30 days of the date of the Company's invoice. The time of payment of the price shall be of the essence of the Contract.
- 6.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 6.3.1 cancel the Contract or suspend any further deliveries to the Customer;
- 6.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- 6.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Yorkshire Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 7 **Delivery**
- 7.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 7.2 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 7.3 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Company, the Company may:
- 7.3.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 7.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the Charges or charge the Customer for any shortfall below the Charges.
- 7.4 If the Company delivers to the Customer a quantity of Goods up to 5% more or less than the quantity set out in the Specification, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of such shortfall or surplus.
- 8 **Risk and property**
- 8.1 Risk of damage to or loss of the Goods shall pass to the Customer:
- 8.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or
- 8.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other sums which are or which become due to the Company from the Customer on any account.
- 8.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer shall be entitled to use the Goods in the ordinary course of its business.
- 8.4
- 8.5 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 9 **Warranties and liability**
- 9.1 Subject to clause 9.3, the Company warrants that the Services will be provided using reasonable care and skill and so far as is reasonably possible in accordance with the Specification and that the Goods will correspond with the Specification at the time of delivery.
- 9.2 Subject to clause 9.7 all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.3 Subject to clause 9.7 the Company shall be under no liability under the warranty in clause 9.1 (or any other warranty, condition or guarantee):
- 9.3.1 in respect of any error in the Specification, any defect arising from negligence or abnormal working conditions of the Customer, failure to follow the Company's instructions (whether oral or in writing), misuse or incorrect storage of the Goods, alteration, reconditioning or repair of the Goods without the Company's approval or fair wear and tear or wilful damage to the Goods;
- 9.3.2 if the Charges have not been paid by the due date for payment;
- 9.3.3 if the Customer has not notified the claim to the Company within 30 days from the date of delivery or performance (as appropriate), or (where any defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure;
- 9.3.4 if the Company has not been given the opportunity to inspect any relevant Goods.
- 9.4 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations under the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control, (including without limitation, any strike, lock out or industrial action).
- 9.5 If a claim in respect any breach by the Company of the warranty in clause 9.1 (or any other warranty, condition or guarantee) is not notified to the Company in accordance with clause 9.3, the Company shall have no liability for the breach.
- 9.6 Where any valid claim in respect any breach by the Company of the warranty in clause 9.1 (or any other warranty, condition or guarantee) is notified to the Company in accordance clause 9.3, the Company shall be entitled, at its sole discretion, to (where the claim relates to Goods) repair or replace the Goods (or the part in question) free of charge or (where the claim relates to Services) reperform the Services (or the part in question) or (in respect of both Goods and Services) refund to the Customer the price of the relevant Goods or Services (or a proportionate part of the price), but the Company shall have no further liability to the Customer.
- 9.7 Nothing in these Conditions limits or excludes the liability of the Company for death or personal injury resulting from negligence, for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company or for any matter for which it is unlawful for the Company to limit or exclude its liability.
- 9.8 Subject to clause 9.7 the Company shall not be liable for: loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of contract or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 9.9 Subject to clause 9.7, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the Charges.
- 10 **Intellectual Property**
- 10.1 The Customer shall indemnify the Company against all Loss awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the manufacture of the Goods in accordance with the Specification.
- 10.2 As between the Company and the Customer, all patents, copyright, design, trade mark or other industrial or intellectual property rights and all other rights in the Goods, documents or information relating to the Goods or Services shall be owned by the Company (except for an intellectual property rights in a Specification provided by the Customer). The Company licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Goods and the Services. If the Contract terminates, this licence shall automatically terminate.
- 10.3 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Customer, subject to clauses 9.8 and 9.9, the Company shall indemnify the Customer against all Loss awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:
- 10.3.1 the Company is given full control of any proceedings or negotiations in connection with any such claim;
- 10.3.2 the Customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;
- 10.3.3 except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);
- 10.3.4 the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- 10.3.5 the Company shall be entitled to the benefit of, and the Customer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Customer which are payable by, or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 10.3.6 without prejudice to any duty of the Customer at common law, the Company shall be entitled to require the Customer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Customer under this clause.
- 11 **Insolvency of Customer**
- 11.1 The Company may terminate this agreement on the occurrence of any of the following events:
- 11.1.1 the Customer ceases or threatens to cease, to carry on business; or
- 11.1.2 the Customer becomes insolvent or goes into liquidation, either compulsory or voluntary (save for the purpose of reconstruction or amalgamation), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of its assets, or if the Customer makes an assignment for the benefit of, or composition with, its creditors generally threatens to do any of these things, or if any similar occurrence under any jurisdiction affects the Customer.
- 12 **General**
- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.4 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.