

## **Thermco Systems Terms and Conditions**

### **1. Basis of contract**

- 1.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. THERMCO may modify these terms from time to time, with the up-to-date version being available on the web site at [www.thermcosystems.com](http://www.thermcosystems.com).
- 1.2 A quotation for the Goods given by THERMCO shall not constitute an offer. A quotation shall only be valid for a period of 30 (thirty) days from its date of issue.
- 1.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions (as modified by any specific and typewritten terms of the quotation). The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate. The Order shall only be deemed to be accepted when THERMCO issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 1.4 Any samples, drawings, descriptive matter or advertising produced by THERMCO and any descriptions or illustrations contained in THERMCO's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

### **2. Goods**

- 2.1 The Goods are described in THERMCO's quotation, including any Specification. THERMCO designed and built Goods shall be (where applicable):
  - 2.1.1 Supplied with a UK Declaration of Conformity and/or an EC Declaration of Conformity; and
  - 2.1.2 Supplied UKCA marked and/or CE marked (as appropriate).
- 2.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify THERMCO against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by THERMCO in connection with any claim made against THERMCO for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with THERMCO's use of the Specification. This clause 2.2 shall survive termination of the Contract.
- 2.3 THERMCO reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and THERMCO shall notify the Customer in any such event.
- 2.4 Subject to payment in full for the Goods, THERMCO grants to the Customer a non-assignable, non-transferable, non-exclusive, royalty free license to use, with any Goods purchased from or supplied by THERMCO, patented methods and processes of THERMCO which are appropriately utilisable in such systems. This license does not extend to the use of any products not purchased from or supplied by THERMCO or in which have been substantially altered by the Customer or any third party. Except as set forth in the preceding paragraph, the sale, lease, or other transfer of Goods to the Customer does not convey any license or right, by implication, estoppel, or otherwise, to any method or process invention of any patent.

- 2.5 Subject to payment in full for the Goods, THERMCO grants to the Customer a non-assignable, non-transferable, nonexclusive, royalty free right to use, in object code form, any software and related documentation furnished under the Contract in conjunction with the Goods supplied only. For the avoidance of doubt, such licence shall automatically terminate upon the use of the software on any equipment other than that for which it was obtained, termination or any material breach of the Contract, or any breach of copyright law with regard to the Customer's use of the software. The licence granted under this clause is subject to the terms of any agreement packaged with the software, which shall prevail in the event of any inconsistency with this clause 2.5.
- 2.6 Where applicable and if set out in the Order, THERMCO standard process demonstration is included and will be performed to a THERMCO-approved standard. General operation and basic maintenance training will be provided at the time of installation for up to a maximum of 1 week. Additional training courses are available for purchase upon request.
- 2.7 Documentation, including full technical, process and maintenance manuals will be in English and will be supplied in electronic copy. Documentation will include schematics, layouts and facility requirements.

### **3. Delivery**

- 3.1 Goods shall be delivered Ex-Works to the delivery location specified in the Order (the "**Delivery Location**") in accordance with latest Incoterms . In cases when THERMCO is responsible for delivery, method and route of shipment are at discretion of THERMCO unless the Customer supplies explicit instructions.
- 3.2 Identification of the Goods to the Contract shall occur (i) for Goods delivered Ex-Works or FCA Thermco Systems, Washington, UK, when THERMCO notifies the Customer that the Goods are ready, and (ii) for all other delivery methods as may be agreed, as each shipment is placed in the hands of the carrier.
- 3.3 Without limitation of the foregoing, the following items are expected to be undertaken by the Customer, unless specifically detailed in the Order:
- 3.3.1 Moving the Goods from the Delivery Location to any Customer facility, location or area thereof;
  - 3.3.2 Siting and aligning the Goods at the place of operation within the Customer's facility;
  - 3.3.3 Providing clean, appropriate work areas and equipment;
  - 3.3.4 Hooking up power, water, air, gases, chemicals, extract, etc.;
  - 3.3.5 Supply power cabling from EPO;
  - 3.3.6 Connection to Customer's facilities;
  - 3.3.7 Safety Gas detection;
  - 3.3.8 Air flow / exhaust set up and abatement of exhaust; and/or
  - 3.3.9 Vacuum pipework from point of used connection to pumps (Thermco LPCVD system); and
- where appropriate for the duration of the equipment assembly, testing and commissioning a senior member of staff will oversee these aspects.
- 3.4 THERMCO standard installation and start-up is included in the above pricing (to Tier I – machine functionality) and will be performed to a THERMCO approved standard.

Installation and first start-up must take place not longer than sixty (60) days from the date of delivery (subject to a reasonable extension to the extent that any delay is caused by a breach by THERMCO of any of its obligations under the Contract). Any delays by the Customer may lead to additional service charges, which THERMCO may determine in the exercise of its reasonable discretion.

- 3.5 Acceptance of the Goods shall be deemed to have taken place on completion of the installation at the Customer's premises, or after ninety (90) calendar days have passed from the date of shipment, whichever is earlier, irrespective of the Goods having reached the Delivery Location.
- 3.6 The Customer may source inspect all Goods prior to shipment from THERMCO at its own cost. All associated travel and expenses incurred in carrying out these source inspections are the sole responsibility of Customer.
- 3.7 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. THERMCO shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide THERMCO with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.8 If THERMCO fails to deliver the Goods, then (subject to and without limitation of clause 8 of these Conditions) its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. THERMCO shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide THERMCO with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.9 If the Customer fails to accept delivery of the Goods (or in the case of Goods delivered Ex Works THERMCO, to collect and remove them) within three days of the agreed delivery date, then, except where such failure or delay is caused by a Force Majeure Event or THERMCO's failure to comply with its obligations under the Contract in respect of the Goods:
  - 3.9.1 delivery of the Goods shall be deemed to have been completed at 09:00 on the third day after the agreed delivery date; and
  - 3.9.2 THERMCO shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.10 If ten days after the agreed delivery date the Customer has not accepted delivery of them (or in the case of Goods delivered Ex Works THERMCO, collected and removed them), THERMCO may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 3.11 THERMCO may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 3.12 Thermco are under no obligations to ship until payments are cleared against the agreed payment schedule

#### **4. Quality / Warranty**

- 4.1 THERMCO warrants that on delivery, and for a period of 12 months from the date the Goods have either (i) met the start-up acceptance specification; (ii) or are released for production, whichever occurs first in this clause, the Goods shall:
  - 4.1.1 conform with the Specification; and

- 4.1.2 be free from material defects in design, material and workmanship; and
- 4.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

In the event of any delay in installation, start-up or acceptance through no fault of THERMCO, the warranty period will begin 90 days from the date of delivery. The warranty set out in this clause 4.1 is given only to the Customer and at the original point of installation of the Goods.

- 4.2 Where the Goods comprise spare parts, the warranty period in clause 4.1 shall be limited to ninety (90) days from the date of delivery. No warranty is given under this clause 5 in respect of Goods which are consumables (for the avoidance of doubt, to the extent permissible under English law).

- 4.3 Subject to clause 4.4, if:

- 4.3.1 the Customer gives notice in writing to THERMCO within 24 hours of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;

- 4.3.2 THERMCO is given a reasonable opportunity of examining such Goods; and

- 4.3.3 the Customer (if asked to do so by THERMCO) returns such Goods to THERMCO's place of business at the Customer's cost,

THERMCO shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. When making a warranty claim the Customer is required to furnish a valid purchase order, serial number, part number, quantity required chemical service, a description of the damage or failure, where applicable a decontamination certificate and appropriate returns approval by Thermco.

- 4.4 THERMCO shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 if:

- 4.4.1 Start-up and commissioning of the Goods have not been performed by THERMCO personnel;

- 4.4.2 the Customer makes any further use of such Goods after giving notice in accordance with clause 4.3;

- 4.4.3 the defect arises from or relates to an alteration of software by the Customer or a third party;

- 4.4.4 The Customer fails to purchase, install and maintain the affected Goods according to THERMCO's standard procedures using THERMCO recommended approved parts.

- 4.4.5 All service, operations and preventative maintenance functions listed in THERMCO's Equipment Operations and Maintenance Manual have not been performed by authorised THERMCO personnel or by THERMCO trained Customer technicians;

- 4.4.6 the defect arises because the Customer failed to follow THERMCO's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods;

- 4.4.7 where Goods have moved and been re-installed within the Customer's facility without THERMCO-authorized assistance;

- 4.4.8 the defect arises as a result of THERMCO following any drawing, design or Specification supplied by the Customer;

- 4.4.9 the Customer modifies, alters or repairs the Goods without the written consent of THERMCO;

- 4.4.10 the defect arises as a result of fair wear and tear, misuse or misapplication, wilful damage or abuse, negligence or neglect, unauthorised alternation, abnormal storage or working conditions, or interruption of essential facilities (air, water, exhaust, power, etc.), providing that the misuse or misapplication, wilful damage or abuse, negligence or neglect, unauthorised alternation, abnormal storage or working conditions shall invalidate entire THERMCO warranty; or
- 4.4.11 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; and for the avoidance of doubt, where a defect is not covered by the warranty, THERMCO may require a purchase order from the Customer in respect of requisite services will be required before THERMCO support will be provided, which support will be charged at THERMCO's applicable rates.
- 4.5 These Conditions shall apply to any repaired or replacement Goods supplied by THERMCO. Except as provided in this clause 4, THERMCO shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1. THERMCO will not be responsible for repair or replacement of any items purchased by the Customer directly from OEM suppliers and installed on Goods, whether before or after delivery.
- 4.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5. Title and risk**
- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until THERMCO receives payment in full (in cash or cleared funds) for the Goods and any other goods that THERMCO has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as THERMCO's property;
- 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.3.3 maintain the Goods in satisfactory condition.
- 5.3.4 Keep them insured against all risks for 110% of the contract value from the date of delivery;
- 5.3.5 notify THERMCO immediately if it becomes subject to any of the events listed in clause 8.1.2 to clause 8.1.4; and
- 5.3.6 give THERMCO such information as THERMCO may reasonably require from time to time relating to:
- (a) the Goods; and
- (b) the ongoing financial position of the Customer.
- 5.4 At any time before title to the Goods passes to the Customer, THERMCO may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

**6. Price and payment**

6.1 The price of the Goods shall be the price set out in the Order. THERMCO may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- 6.1.1 any factor beyond THERMCO's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 6.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 6.1.3 any delay caused by any instructions of the Customer or failure of the Customer to give THERMCO adequate or accurate information or instructions.

6.2 The price of the Goods:

- 6.2.1 excludes any amounts in respect of value added tax or equivalent tax at the place of delivery (**VAT**), which the Customer shall additionally be liable to pay to THERMCO at the prevailing rate, subject to the receipt of a valid VAT invoice (or in lieu thereof the purchaser shall provide THERMCO with a tax exemption certificate acceptable to the taxing authorities);
- 6.2.2 excludes all present and future customs duties, tariffs, licenses and other similar charges which shall be the responsibility of the Customer; and
- 6.2.3 where delivery is not Ex Works THERMCO, excludes all costs, expenses and other charges associated with the packaging, insurance and transportation of the Goods, which shall be invoiced to the Customer.

6.3 Unless alternative terms are agreed in writing, THERMCO may invoice the Customer for the Goods:

<b>Timing</b>	<b>Amount of agreed purchase price</b>
With Order	30%
Upon dispatch / at delivery Ex Works THERMCO (as applicable)	60%
At acceptance	10%

6.4 The Customer shall pay each invoice submitted by THERMCO:

- 6.4.1 within net 30 days from the date of the invoice (unless or in accordance with any credit terms agreed by THERMCO and confirmed in writing to the Customer);
- 6.4.2 in full and in cleared funds to a bank account nominated in writing by THERMCO;
- 6.4.3 the final 2 payments set out in clause 6.3 are required to be covered by an irrevocable letter of credit for the benefit of THERMCO (on terms reasonably acceptable to THERMCO), unless otherwise agreed in writing; and
- 6.4.4 time for payment shall be of the essence of the Contract.

6.5 If the Customer fails to make a payment due to THERMCO under the Contract by the due date, then, without limiting THERMCO's remedies under clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 6.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.7 If a Bank Guarantee is requested by the Customer, all costs and expenses associated with the implementation of the same will be passed to the Customer at the point of Bank Guarantee issue.
- 7. Limitation of liability**
- 7.1 The restrictions on liability in this clause 7 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 7.2.1 death or personal injury caused by negligence;
  - 7.2.2 fraud or fraudulent misrepresentation;
  - 7.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 7.2.4 defective products under the Consumer Protection Act 1987.
- 7.3 Subject to clause 7.2, THERMCO's total liability to the Customer shall not exceed the amount received by THERMCO from Customer under the Contract.
- 7.4 Subject to clause 7.2, the following types of loss are wholly excluded:
- 7.4.1 loss of profits;
  - 7.4.2 loss of sales or business;
  - 7.4.3 loss of agreements or contracts;
  - 7.4.4 loss of anticipated savings;
  - 7.4.5 loss of use or corruption of software, data or information;
  - 7.4.6 loss of or damage to goodwill; and
  - 7.4.7 indirect or consequential loss.
- 7.5 Subject to clause 7.2, no claim shall be advanced, nor any proceedings, action or suit be brought by the Customer against THERMCO arising out of the purchase, manufacture, use, delivery (including late delivery), or transportation of Goods, whether such suit or action is for breach of contract, breach of warranty, tort or otherwise:
- 7.5.1 unless such action is commenced within one year after the cause of action has accrued; and
  - 7.5.2 unless Customer has paid at the time the claim is made, or the suit or action is filed, the entire purchase price of the Goods (including all instalments thereof), in strict accordance with the terms of the Contract, and failure to make such payment shall be an absolute defence to any such suit, action or claim.
- 7.6 If the Customer fails to perform any of its obligations pursuant to these Conditions, the Customer shall pay THERMCO all costs and expenses incurred by THERMCO, including all attorney's fees, in enforcing THERMCO's rights relating to such obligation, whether by formal proceedings or otherwise, in addition to any other remedy available to THERMCO.

7.7 THERMCO shall have no liability in respect of any claim by the Customer that it did not perform any support services in accordance with clause 2.5 unless the Customer gives notice thereof to THERMCO within 90 days.

7.8 This clause 7 shall survive termination of the Contract.

## 8. Termination

8.1 Without limiting its other rights or remedies, THERMCO may terminate this Contract with immediate effect by giving written notice to the Customer if:

8.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;

8.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or in connection with any analogous procedure in any other jurisdiction;

8.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

8.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

8.2 Without limiting its other rights or remedies, THERMCO may suspend provision of the Goods under the Contract or any other contract between the Customer and THERMCO if the Customer becomes subject to any of the events listed in clause 8.1.2 to clause 8.1.4, or THERMCO reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, THERMCO may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to THERMCO all of THERMCO's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, THERMCO shall submit an invoice, which shall be payable by the Customer immediately on receipt.

8.5 The Customer, acting via its authorised representative, may by notice in writing request cancellation of its Order for the Goods prior to delivery. Acceptance of cancellation will be at THERMCO's discretion and cancellations of Orders already placed and scheduled in THERMCO production schedules will attract the following charges:

<b>Notice in Calendar Weeks Before Scheduled Ship Date</b>	<b>Cancellation Terms</b> (value of work completed to date of cancellation to a minimum of).
More than 10 weeks to scheduled ship date	*70% of contract value
10 to 7 weeks to scheduled ship date	*90% of contract value
6 weeks to scheduled ship date	*100% of contract value

Without limitation of THERMCO's rights under this clause 8.5, should the Customer cancel its Order and enter a replacement Contract with THERMCO for a similar machine model and description, within five working days, no cancellation charge will



arise under this clause. The parties agree that the charges set out in this clause 8.5 are appropriate and not disproportionate, taking into account the legitimate commercial interests of THERMCO in the performance of the Contract and (without limitation) the costs of its performance and the lost production capacity resulting from cancelled orders.

8.6 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

8.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 9. Force majeure

THERMCO shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

## 10. General

### 10.1 Assignment and other dealings

10.1.1 THERMCO may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

10.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of THERMCO.

### 10.2 Confidentiality

10.2.1 Any confidential information transferred from Customer to THERMCO or any THERMCO approved agent/subcontractor shall be pursuant to THERMCO's standard Confidential Disclosure Agreement.

10.2.2 Without prejudice to THERMCO's rights to the protection of its proprietary and confidential information at general law in any applicable jurisdiction, all drawings, specifications, photographs, product specifications, system manuals, spare parts identifiers, process manuals, best known methods, data, or other such information furnished by THERMCO to the Customer shall be deemed THERMCO's confidential information" if (1) the information or document containing it is marked "Proprietary" or "Confidential"; or (2) in the case of an oral or visual disclosure of information, THERMCO makes a contemporaneous oral statement or delivers to Customer a written statement within thirty (30) days to the effect that such disclosure is confidential; or (3) in the case of information which is obtained as the result of a visit by Customer to THERMCO's facilities, the information is obtained via: (i) exposure to THERMCO's desks, work areas, computers, or other areas in THERMCO's facilities; (ii) hearing discussions among THERMCO's employees, consultants, or agents; or (iii) any other inadvertent disclosure of such information while Customer is at THERMCO.

10.2.3 Customer specifically acknowledges that technical designs embodied in Goods furnished by THERMCO, including without limitation thermal or chemical

equipment and software used to operate any of the foregoing Goods shall be deemed THERMCO's confidential information.

10.2.4 Without limitation of THERMCO's rights at general law in any applicable jurisdiction, Customer shall not

- (a) use THERMCO's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract;
- (b) use any THERMCO confidential information to reverse engineer, reconstruct, or decompile any sample or any Goods supplied by THERMCO or any product that Customer knows or reasonably believes is an THERMCO product;
- (c) use any THERMCO confidential information in conjunction with any third party equipment;
- (d) use any THERMCO confidential information as a basis to develop, modify, or alter, any third party equipment or the use of any such third-party equipment;
- (e) disclose, sell, communicate, convey or otherwise transfer THERMCO's confidential information, whether wholly or partially, to any third-party, or assist any third-party in pursuing any of the activities set out in this clause 11.2.4.

10.2.5 Customer shall:

- (a) disclose THERMCO's confidential information only to those of its employees, consultants, associates, or agents who have a need to know such information to perform required job duties under this contract, and are informed of its confidential nature or as may be required by law, or by the lawful order of a court of competent jurisdiction or any governmental or regulatory authority;
- (b) protect THERMCO Confidential Information with at least the degree of care with which it protects its own confidential information, but in no case with less than a reasonable degree of care;
- (c) notify THERMCO promptly in writing upon the discovery of any unauthorized use or disclosure of Confidential Information by Customer, by any of its employees, consultants, associates, or agents, or by any third-party.

10.2.6 Customer agrees that any breach or threatened breach of its confidentiality obligations to THERMCO (whether under the terms of this clause 10.2 or at general law) shall be a material breach of the Contract, including for purposes of clause 8.1.1.

10.2.7 In the event of any such breach or threatened breach, Customer agrees to assist and cooperate with THERMCO at THERMCO's direction and the Customer's cost to regain possession of the Confidential Information and prevent its further unauthorized use or dissemination.

### 10.3 **Discretionary Returns**

10.3.1 THERMCO may at its discretion accept the return of Goods according to this clause 10.3.

10.3.2 In no case are Goods to be returned without first obtaining THERMCO's permission in the form of a Return Material Authorisation number. Goods returned without a Return Material Authorisation Number displayed, and where

appropriate a decontamination certificate, on the outside of the package, will not be accepted from carrier at THERMCO dock.

- 10.3.3 Only unused Goods as currently manufactured which have been credited or replaced with equivalent Good, to Customer within ninety (90) days from the date a return is requested will be considered.
- 10.3.4 Goods accepted for credit are subject to a minimum service charge of fifteen per cent (15%), and the Customer shall bear all insurance and transportation charges.
- 10.3.5 Goods built to order or to a Customer's Specification is not subject to return for credit under any circumstances.
- 10.3.6 Goods must be securely packed to reach us without any damage.

#### 10.4 **Patents**

- 10.4.1 Subject to payment in full of the purchase price of the Goods in question, THERMCO shall indemnify the Customer against all damages and costs (excluding any indirect or consequential losses, any loss of profit, loss of reputation, but including interest, penalties and reasonable legal costs) awarded against the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's rights in a United States patent arising out of or in connection with the supply or use of the Goods, except to the extent that the claimed infringement arises from the manufacture or provision of Goods to a Customer's design or Specification.
- 10.4.2 THERMCO's liability under this indemnity is conditional on the Customer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Customer that may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Customer shall:
  - (a) as soon as reasonably practicable, give written notice of the Claim to THERMCO, specifying the nature of the Claim in reasonable detail;
  - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of THERMCO;
  - (c) give THERMCO and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, to enable THERMCO and its professional advisers to examine them and to take copies (at THERMCO's expense to assess the Claim); and
  - (d) be deemed to have given THERMCO sole authority to avoid, dispute, compromise or defend the Claim.
- 10.4.3 Where the Goods in question, or any part thereof, are determined by a Court with jurisdiction over the Claim to infringe a third party's rights under a United States patent and the use of such Goods or part thereof is enjoined, THERMCO shall have the option of:
  - (a) procuring for the Customer the right to continue using such Goods or part thereof;
  - (b) or replacing the same with a non-infringing product;

- (c) modifying the same so as to avoid infringement; or
- (d) rescinding the Contract for the Goods and refunding the purchase price to the Customer.

10.4.4 Nothing in this clause 10.4 shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a Claim.

#### 10.5 **Entire agreement**

10.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

10.5.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

10.6 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.7 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 10.8 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 10.9 **Contracts with or for the benefit of the United States Government.**

10.9.1 If a US government contract number is shown on the Order, clauses contained in the ASPR which the US government makes mandatory for a contractor under a government contract to include in its subcontracts thereunder will apply to this order.

10.9.2 Without limitation of clause 10.5.2, merchandise supplied by THERMCO is manufactured in a manner which complies with the Fair Labour Standards Act of 1938, as amended.

#### 10.10 **Notices.**

10.10.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified in the Order or used by the parties for email communication;

10.10.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 09:00 on the second Business Day after posting;
- (c) if sent by pre-paid airmail from outside the United Kingdom, at 09:00 on the fifth Business Day after posting; or
- (d) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (d), business hours means 09:00 to 17:00 Monday to Friday on a day that is not a public holiday in the place of receipt.

10.10.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### 10.11 Third party rights

10.11.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

10.11.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

10.12 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

10.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims arising out of or in connection with the Contract or its subject matter or formation, save that THERMCO may, at its absolute discretion, bring proceedings in any jurisdiction (i) to obtain payment of any liability of the Customer to THERMCO; (ii) to enforce any judgment of an English Court; and/or (iii) to obtain declaratory or injunctive relief.

### 11. Interpretation

<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time.
<b>Contract</b>	the contract between THERMCO and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
<b>Customer</b>	the person or firm who purchases the Goods from THERMCO.
<b>Delivery Location</b>	has the meaning given in clause 3.1.
<b>Force Majeure Event</b>	an event, circumstance or cause beyond THERMCO's reasonable control, including due to any cause beyond THERMCO's control, including but not limited to, acts of God, fire, theft, accident, flood, war, sabotage, slowdown, strikes, or other labour difficulties, riot, embargo, customs

	clearance, government act, regulation, rule, ordinance or request, or inability to obtain necessary labour, materials, manufacturing facilities, or transportation.
<b>Goods</b>	the goods (or any part of them) set out in the Order.
<b>Order</b>	the Customer's order for the Goods, as set out in the Customer's written acceptance of THERMCO's quotation.
<b>Specification</b>	any specification for the Goods, including any related plans and drawings, that is included in, referred to in or attached to a quotation or is otherwise agreed in writing by the Customer and THERMCO.
<b>THERMCO</b>	Thermco Systems Limited (registered in England and Wales with company number 04966845), of Spring Gardens London Road, Washington, West Sussex RH20 3BS.

In these Conditions:

- 11.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a party includes its successors and permitted assigns;
- 11.2 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision;
- 11.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms; and
- 11.4 A reference to **writing** or **written** includes fax and email.