

THERMON AUSTRALIA PTY LTD

A.C.N. 000 554 932

30 London Drive, Bayswater Victoria 3151

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TERMS AND CONDITIONS OF TRADE

1. Definitions

In these conditions:

"Agreement" means any agreement or contract entered into for the provision of goods by Thermon to the Customer;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods from Thermon;

"goods" means goods supplied by Thermon to the Customer;

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

"Intellectual Property" means all copyright, trade marks, designs, specifications, drawings, confidential information, manufacturing processes, circuit layouts and all modifications, improvements and derivations (whether registrable or not) owned or licensed by Thermon in respect of the goods;

"price list" means the price list or catalogue issued by Thermon from time to time;

"Terms" means these Terms and Conditions of Trade; and

"Thermon" means Thermon Australia Pty Ltd of 30 London Drive, Bayswater, Victoria 3151 (ACN 000 554 932);

2. Basis of Agreement

2.1 Unless otherwise agreed by Thermon in writing, the Terms apply exclusively to every contract for the sale of goods by Thermon to the Customer and cannot be varied or supplanted by any other conditions, including the Customer's terms and conditions of purchase (if any).

2.2 Any written quotation provided by Thermon to the Customer concerning the proposed supply of goods is:

- (a) provided on the basis of Thermon's price list;
- (b) an invitation to treat only;
- (c) subject to the Customer offering to enter into an Agreement and accepting these Terms.

2.3 The Terms may include additional terms in Thermon's quotation, which are not inconsistent with the Terms.

2.4 The Agreement is accepted by Thermon when Thermon confirms its acceptance of an offer from the Customer in writing or by electronic means or provides the Customer with the goods.

2.5 Thermon may vary or amend these Terms by notice in writing to the Customer at any time. Any variations or amendments will apply to orders made by the Customer after the date of notice.

3. Pricing

3.1 Prices quoted for the supply of goods exclude GST and any other taxes or duties imposed on or in relation to the goods. In addition to payment of the price of the goods, the Customer must pay any GST and any other taxes or duties imposed on the goods.

3.2 Unless otherwise notified to the Customer, the Customer will be responsible for all costs associated with delivery of the goods to the Customer.

3.3 If the Customer requests any variation to the Agreement, or if there is any change in the costs incurred by Thermon in relation to the goods, including due to fluctuating currency exchange rates, freight insurance and customs or primage duties, Thermon may vary its price for the goods in order to take account of any such change, by notifying the Customer.

4. Payment

4.1 Unless credit is provided, the Customer must pay for the goods strictly by cash on delivery.

4.2 Where Thermon grants credit facilities to the Customer, payment for the goods must be made in full within 30 days from the end of the month in which the goods were delivered.

4.3 Thermon is entitled at any time to request such security or additional security as it in its discretion thinks fit.

4.4 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.5 Payment terms may be revoked or amended at Thermon's sole discretion immediately upon giving written notice to the Customer.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any

amount payable to Thermon, or otherwise breaches any term of this Agreement, then all money which would become payable by the Customer to Thermon at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Thermon may, without prejudice to any other remedy available to it:

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify Thermon from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;
- (c) cease or suspend for such period as Thermon thinks fit, supply of any further goods or the provision of credit facilities to the Customer;
- (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by Thermon,

5.2 without effect on Thermon's accrued rights under any contract. Clauses 5.1(c) and (d) may also be relied upon, at Thermon's option:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. Passing of Property

6.1 Until full payment in cleared funds is received by Thermon for all goods supplied by it to the Customer, as well as all other amounts owing to Thermon by the Customer:

- (a) title and property in all goods remain vested in Thermon and does not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for Thermon;
- (c) the Customer must keep the goods separate from its goods and maintain the labelling and packaging of Thermon;
- (d) the Customer is required to hold the proceeds of any sale of the goods on trust for Thermon in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
- (e) Thermon may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of Thermon, and for this purpose the Customer irrevocably licences Thermon to enter such premises and also indemnifies Thermon from and against all costs, claims, demands or actions by any party arising from such action.

7. Risk and Insurance

7.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on the goods being delivered to the Customer's premises or nominated delivery point.

8. Performance of Agreement

8.1 Any period or date for delivery of goods stated by Thermon is intended as an estimate only and is not a contractual commitment. Thermon will use its reasonable endeavours to meet any estimated dates for delivery of the goods.

- 8.2 A completed driver's manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.
- 9 Delivery**
- 9.1 Thermon will arrange for the delivery of the goods to the Customer and shall designate the route and the means of transportation for the delivery of goods.
- 9.2 The Customer must advise Thermon in writing within 72 hours of delivery:
- of the non arrival of any or all of the goods;
 - if there is damage to the goods;
 - that the wrong goods have been received; or
 - that the quantity of the goods is incorrect.
- 10 Liability**
- 10.1 Except as specifically set out here, or contained in any warranty statement provided with the goods, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
- 10.2 Replacement or repair of the goods is the absolute limit of Thermon's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods by the Customer or any third party.
- 10.3 Thermon is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 10.4 Thermon will not be liable for any loss or damage suffered by the Customer where Thermon has failed to deliver goods or fails meet any delivery date or cancels or suspends the supply of goods.
- 10.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be excluded, restricted or modified.
- 11 Cancellation**
- 11.1 If, through circumstances beyond Thermon's control, Thermon is unable to effect delivery or provision of the goods, then Thermon may cancel the Customer's order (even if it has already been accepted) by notice to the Customer.
- 11.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Thermon after that order has been accepted.
- 12 Specifications**
- 12.1 All specifications, drawings, illustrations, descriptive matter and particulars contained in Thermon's catalogues, price list, website and marketing documents ("Specifications") are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind.
- 13 Warranties**
- 13.1 Thermon warrants that its goods will be free from defect in materials or workmanship for 12 months from the date of purchase.
- 13.2 When any defects, shortages, claim for damage or non-compliance with the Agreement specifications is accepted by Thermon, Thermon may, at its option, replace the goods or refund the price of the goods.
- 13.3 Thermon will not under any circumstances accept goods for return if:
- the goods have been subjected to abnormal conditions;
 - the goods have not been used or installed in accordance with Thermon's instructions, recommendations or specifications or have been misused, neglected or improperly maintained; and
 - unauthorised repairs, work or alterations to the goods have been attempted.
- 13.4 If Thermon accepts goods for return, the Customer will receive a credit for the returned goods equal to the price charged by Thermon less (in Thermon's sole discretion) a 25% deduction for handling and restocking charges and less any cost borne by Thermon in association with settling and paying claims arising out of the termination of work it subcontracts or any orders relating to the goods covered.
- 13.5 The Customer must pay all freight charges associated with the return of goods to Thermon.
- 13.6 Each range of goods provided by Thermon is subject to specific warranty terms, limitations and exclusions:
- that are supplied with the goods; and
 - that are available from Thermon upon request.
- 13.7 This warranty is in addition to any warranties imposed by Australian State and Federal legislation that cannot be excluded.
- 14 Intellectual Property**
- 14.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 14.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof or any patents, inventions, trade marks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.
- 14.3 The Customer must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.
- 14.4 Any Intellectual Property provided to the Customer by Thermon in connection with the goods remains the exclusive property of Thermon and must be returned to Thermon on demand and shall not be copied or communicated to any third party without the express prior written consent of Thermon.
- 15 Force Majeure**
- 15.1 Thermon shall have no liability whatsoever under or in any way related to the sale and purchase of the goods or otherwise for any failure to fulfil any obligation hereunder to the extent that such fulfilment is prevented by circumstances beyond its reasonable control including but without limitation to industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts of terrorism, or acts of war. Should an event of force majeure occur Thermon may terminate the Agreement by giving the Customer written notice.
- 16 Trust Company**
- 16.1 In the case of a Trust Company, the Customer acknowledges that the Trustee shall be liable for complying with this Agreement and that in addition the assets of the Trust shall be available to meet payment for the goods.
- 17 Miscellaneous**
- 17.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 17.2 Thermon's failure to enforce any of these Terms shall not be construed as a waiver of any of Thermon's rights.
- 17.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining terms.
- 17.4 A notice must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on the facsimile machine confirming transmission.
- 17.5 The Customer must notify Thermon of any proposed changes of ownership or registered particulars or alteration or addition to the shareholding or directorship of the Customer at least 14 days prior to the change taking effect.
- 18 Privacy**
- 18.1 Thermon is bound by the *Privacy Act 1988* and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to the Supplier in accordance with the *Privacy Act*.
- 18.2 Thermon requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Thermon in connection with this Agreement.