

# THERMON AUSTRALIA PTY LTD

## PART 2: TERMS AND CONDITIONS OF TRADE

### 1. Definitions

In these conditions:

**"ACL"** means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;

**"Statutory Guarantees"** means the guarantees automatically and necessarily implied in transactions concerning the supply of Goods to a Consumer;

**"Agreement"** means any agreement for the provision of Goods by Thermon to the Customer;

**"Consumer"** has the meaning given in the ACL;

**"Customer"** means the person, jointly and severally if more than one, acquiring Goods from Thermon;

**"Custom-Made Product"** means any product that is designed and/or manufactured by Thermon (or a Related body corporate of Thermon) to meet Customer specific requirements.

**"Custom-Made Products Express Warranty"** means the terms of the express warranty specified in Paragraph 16;

**"Goods"** means goods supplied by Thermon to the Customer (including, where applicable, Custom-Made Products);

**"GST"** has the meaning given 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;

**"PO"** means a purchase order for the Goods submitted by the Customer to Thermon, which the Customer agrees are incorporated into these Terms;

**"PPSA"** means the *Personal Property Securities Act 2009 (Cth)* as amended;

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

**'Related body corporate'** has the meaning given in the *Corporations Act 2001 (Cth)*

**"RMA"** means Return Material Authority;

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

**"Thermon"** means Thermon Australia Pty Ltd (ACN 000 554 932)

### 2. Basis of Agreement

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

2.2 Any quotation provided by Thermon to the Customer for the proposed supply of Goods is:

- (a) provided on the basis of Thermon's Price list;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

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

2.4 An Agreement is accepted by Thermon when Thermon accepts, in writing or electronic means, a PO from the Customer or provides the Customer with the Goods.

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

### 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.

3.2 Unless otherwise agreed, the Customer is 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 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 in full 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 for payment of the Goods 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 by Thermon giving written notice to the Customer at any time before Thermon's acceptance of an Agreement.

4.6 The time for payment is of the essence.

### 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 of these Terms 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 of its other accrued or contingent rights:

- (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 these Terms or to recover any Goods;
- (c) cease or suspend supply of any further Goods or the provision of credit facilities to the Customer;
- (d) by written notice to the Customer, terminate any uncompleted Agreement.

5.2 Paragraphs 5.1(c) and (d) may also be relied upon, at Thermon's option:

- (a) where the Customer is a natural person 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, receiver, receiver and manager, administrator or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up, administration, dissolution without winding up or deregistration of the Customer.

### 6. Passing of Property

6.1 Until Thermon receives full payment in cleared funds 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 in such a manner that they can be identified as the property of Thermon;
- (c) the Customer must keep the Goods separate from its goods and maintain Thermon's labelling and packaging;
- (d) the Customer must hold the proceeds of any sale of the Goods on trust for Thermon in a separate account with a bank to whom the Customer has not given security, however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
- (e) in addition to its rights under the PPSA, Thermon may without notice, enter any premises where it suspects the Goods are and remove them, notwithstanding that they may have been attached to other Goods not Thermon's property, 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. Personal Property Securities Act

7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

- 7.2 For the purposes of the PPSA:
- (a) terms used in Paragraph 7 that are defined in the PPSA have the same meaning as in the PPSA;
  - (b) these Terms are a security agreement and Thermon has a purchase money security interest in all present and future Goods supplied by Thermon to the Customer and the proceeds of the Goods received by the Customer;
  - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer to Thermon at any particular time; and
  - (d) the Customer must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by Thermon on the Personal Property Securities Register.
- 7.3 The security interest arising under this Paragraph 7 attaches to the Goods when the Goods are dispatched from Thermon's premises and not at any later time.
- 7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132 135 and 157 of the PPSA.
- 7.5 To the extent permitted by the PPSA, the Customer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Thermon will apply only to the extent that they are mandatory or Thermon agrees to their application in writing;
  - (b) where Thermon has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply; and
  - (c) pursuant to section 275(6) of the PPSA, neither Thermon nor the Customer is required to disclose to an interested person information regarding Thermon's security interest.
- 7.6 The Customer must immediately upon Thermon's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under these Terms; and
  - (b) procure from any person considered by Thermon to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Thermon may at any time require.
- 7.7 The Customer must not, without the prior written consent of Thermon:
- (a) register a financing statement or a financing change statement in relation to the Goods pursuant to the PPSA;
  - (b) make a demand to alter the financing statement in relation to the Goods pursuant to section 178 of the PPSA; or
  - (c) grant any security interest, lien or other right over the Goods (of any of them)
- 7.8 Thermon may allocate amounts received from the Customer in any manner Thermon determines, including in any manner required to preserve any purchase money security interest it has in the Goods supplied by Thermon.
- 8. Risk and Insurance**
- 8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the Goods being delivered to the Customer's premises or nominated delivery point.
- 9. Performance of Agreement**
- 9.1 Any period or date for delivery of Goods stated by Thermon is an estimate only and not a contractual commitment.
- 9.2 Thermon will use its reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated delivery date.
- 9.3 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.
- 10. Delivery**
- 10.1 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.
- 10.2 Thermon may make part delivery of Goods and may invoice the Customer for the Goods provided.
- 10.3 The Customer must advise Thermon in writing within 72 hours of delivery:
- (a) if there is damage to the Goods;
  - (b) that the wrong Goods have been received; or
  - (c) that the quantity of the Goods is incorrect.
- 11. Liability**
- 11.1 Except as set out in these Terms, and subject to any guarantees, terms, warranties and conditions that by law cannot be excluded (including guarantees given under Division 1 of Part 3-2 of the ACL), any term, guarantee, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or any remedy for their failure, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
- 11.2 The liability of Thermon (and its Related bodies corporate) to the Customer (if the Customer is a consumer) for any breach of a consumer guarantee, warranty or condition imposed by the ACL is limited to such one or more of the following as Thermon decides:
- (a) replacing the Goods or resupplying equivalent Goods;
  - (b) repairing the Goods;
  - (c) paying the cost of replacing the Goods or acquiring equivalent Goods;
  - (d) paying the cost of having the Goods repaired.
- Except as provided in this Paragraph 11.2 and in Paragraph 11.3, nothing in the Terms restricts, limits or modifies any rights a Consumer may have against Thermon (and its Related bodies corporate) under Divisions 1 and 2 of Part 5-4 of the ACL.
- 11.3 The liability of Thermon (and its Related bodies corporate) to indemnify the Customer under Division 3 of Part 5-4 of the ACL where the Customer has supplied the Goods to a Consumer:
- (a) if the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited to:
    - (i) the cost of replacing the Goods;
    - (ii) the cost of supplying equivalent Goods; or
    - (iii) the cost of having the Goods repaired,
 whichever is the lowest amount; and
  - (b) if the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited to the payment of the indemnity amount determined for the purposes of section 274 of the ACL.
- 11.4 If the Goods are acquired by the Customer otherwise than as a Consumer, then:
- (a) the liability of Thermon (and its Related bodies corporate) to the Customer; and
  - (b) the remedies available to the Customer against Thermon (and its Related bodies corporate),
- in connection with the Goods, their quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance are limited solely to those provided for in:
- (c) the specific warranty terms for the Goods, as supplied by Thermon with the Goods or otherwise available from Thermon;
  - (d) any other express warranty terms given to the Customer by Thermon in respect of the Goods.
- The benefit of the warranty given under those terms is personal to the Customer and is not assignable without the prior consent of Thermon.
- 11.5 To the maximum extent permitted by law and subject to the other provisions of this Paragraph 11, Thermon's total liability to the Customer (or any Related body corporate) arising out of or in connection with its performance of its obligations pursuant to these Terms or any Agreement or arising out of the Thermon's supply of any Goods to the Customer, whether under statute, in equity or tort (including negligence) is limited as follows:
- (a) Thermon shall have no liability to the Customer (or any Related body corporate) for any Consequential Loss; and
  - (b) Thermon's total aggregate liability for all Losses of the Customer (and all Related bodies corporate), howsoever arising, shall not exceed the GST-exclusive aggregate price

- paid by the Customer to Thermon for the Goods that give rise to the Loss in question.
- 11.6 In Paragraph 11.5:
- (a) “**Loss**” means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority; and
  - (b) “**Consequential Loss**” means loss of expected savings, loss of profit, loss of revenue, loss of goodwill, lost or delayed production, increased financing costs, downtime, business interruption costs, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statutory or otherwise.
- 12. Cancellation**
- 12.1 If, through circumstances beyond Thermon's control, it is unable to deliver the Goods, then it may cancel the Customer's order (even if it has already been accepted) by notice to the Customer.
- 12.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on Thermon once the order has been accepted.
- 13. Specifications**
- 13.1 All specifications, drawings, illustrations, descriptive matter and particulars contained in Thermon's catalogues, price list, website and marketing documents are indicative only, do not form part of these Terms, and are not representations or warranties of any kind.
- 14. Shortages and exchanges**
- 14.1 Subject to Paragraph 11 and the remainder of this Paragraph 14, if any shortages, claim for damaged Goods or non-compliance with the Agreement specifications is notified to and accepted by Thermon, Thermon may, at its option, exchange the Goods or provide credit in accordance with this Paragraph 14.
- 14.2 Subject to the remainder of this Paragraph 14, catalogue products may be returned for change of mind.
- 14.3 Thermon will not under any circumstances accept Goods for return if:
- (a) subject to Paragraph 16, the Goods are custom-made or have otherwise been specifically produced, imported or acquired to fulfil the Agreement;
  - (b) have been altered in any way;
  - (c) have been used or cut; or
  - (d) are not in their original condition and packaging.
- 14.4 Prior to returning any Goods, the Customer must obtain an RMA number. No returns will be accepted without an RMA number. An RMA number must be obtained by contacting Thermon at 30 London Drive, Bayswater, Victoria, 3153. Phone: (03) 9762 6900. Fax (03) 9762 9519. Email [aus.sales@thermon.com](mailto:aus.sales@thermon.com) and then providing by email the following:
- (a) Thermon project, quote, sales order and / or invoice number;
  - (b) Customer PO number;
  - (c) shipment date;
  - (d) complete description and quantity of good(s) being returned; and
  - (e) reason for return.
- 14.5 Subject to Paragraph 14.6, if Thermon accepts Goods for return, the Customer will receive a credit for the returned Goods equal to the price charged for those Goods 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.
- 14.6 Thermon may exchange "stockable" heating cables without imposing a restocking fee if:
- (a) the cables are returned within 12 months of original shipment;
  - (b) the footage and type of cable returned is similar to the cable available for exchange;
  - (c) the returned cable is unused, uncut, resaleable and in the original packaging; and
  - (d) the Customer provides a new PO.
- 14.7 The Customer must pay all freight charges associated with the return of Goods to Thermon.
- 14.8 If the Customer is a Consumer, nothing in this Paragraph 14 limits any remedy available for a failure of the Statutory Guarantees.
- 15. Warranty**
- 15.1 Thermon's Goods come with guarantees that cannot be excluded under the ACL. If the Customer is a consumer, the Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer (if a Consumer) is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to major failure.
- 15.2 Subject to Paragraph 16, each range of Goods provided by Thermon is subject to specific warranty terms, limitations and exclusions:
- (a) that are supplied with the Goods; and
  - (b) that are available from Thermon upon request.
- If specific warranty terms:
- (a) are not supplied with the Goods; or
  - (b) are not otherwise available from Thermon upon request, then Paragraphs 15.3 to 15.12 will apply.
- 15.3 Subject to the specific terms, limitations and exclusions referred to in Paragraphs 11 and 15.2, Thermon warrants that the Goods will be free from defect in materials or workmanship for 12 months from the date of purchase.
- 15.4 If a defect appears in Thermon's manufacture or workmanship of the Goods before the end of the warranty period, Thermon will, in its sole discretion, either repair or replace the Goods or the defective part of the Goods free of charge or provide credit for the Goods equal to the price for the Goods charged by Thermon.
- 15.5 Thermon reserves the right to replace defective parts of the Goods with parts and components of similar quality, grade and composition where an identical part or component is not available.
- 15.6 Goods presented for repair may be replaced by refurbished Goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.
- 15.7 The warranty does not apply where:
- (a) the Goods have been subjected to abnormal conditions;
  - (b) 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; or
  - (c) unauthorised repairs, work or alterations to the Goods have been attempted.
- 15.8 If a fault covered by warranty occurs, the Customer must:
- (a) follow the process for returns set out in Paragraph 14.4 and
  - (b) make the Goods available to Thermon for inspection and testing. The Customer is responsible for all costs incurred in returning the Goods to Thermon.
- 15.9 If the Customer requires replacement Goods prior to inspection or repairs being undertaken, Thermon may require the Customer to provide a new PO number for the replacement Goods to be shipped and invoiced. If Thermon subsequently determines that the Customer has a valid warranty claim, Thermon will issue a credit to be applied against the new invoice in which the replacement Goods were shipped.
- 15.10 Thermon will pay freight costs associated with returning the repaired or replacement Goods to the Customer.
- 15.11 Subject to Paragraph 15.10, the repair or replacement of the Goods or the provision of credit equal to the price charged for the Goods is the absolute limit of Thermon's liability under this express warranty.
- 15.12 This warranty is in addition to any warranties imposed by Australian State and Federal legislation that cannot be excluded.

## 16. Custom-Made Products

### 16.1 Warranty

- (a) Separately and in addition to any applicable Statutory Guarantees, Thermon offers a Custom-Made Products Express Warranty under which Thermon will repair or replace a Custom-Made Product (or part thereof) which has been found defective as a result of the utilization of improper material in the manufacturing or construction process, on the conditions, and subject to the limitations, under this Paragraph 16.
- (b) Under the Custom-Made Products Express Warranty, Thermon will repair or replace (at its election) a Customer's Custom-Made Product (or any part thereof) at any time within the period ending on the earlier of:
  - 16.1.b.1 eighteen (18) months from delivery; or
  - 16.1.b.2 twelve (12) months from date of start of operation.
- (c) Thermon will, acting reasonably, determine the Customer's claim under the Custom-Made Products Express Warranty in its sole discretion.

### 16.2 Conditions

- (a) The Customer must notify Thermon in writing of the defect in the Custom-Made Product immediately upon discovery by the Customer or so soon thereafter as it is practicable.
- (b) Thermon reserves the right to require an inspection of the Custom-Made Product before responding to the claim under the Custom-Made Products Warranty.
- (c) The Customer warrants the accuracy of calculations, sizing, specification and/or designs provided by the Customer, its servants, agents or independent contractors to Thermon, pertaining to any prospective Custom-Made Products that will be manufactured by Thermon.

### 16.3 Exclusions

- (a) The Customer acknowledges and agrees that Custom-Made Products will not be repaired or replaced under the Custom-Made Products Warranty if the defect is caused in whole or in part by any one or more of the following:
  - 16.3.a.1 the supply of inaccuracies described particularly in Paragraph 16.2(c) above by the Customer, its servants, agents or independent contractors;
  - 16.3.a.2 an act or omission by the Customer, its agents, servants or independent contractors which, without limiting for greater certainty, but not so as to limit the generality of the foregoing, includes physical, chemical or mechanical abuse, accident, improper installation of the Custom-Made Products, improper storage and handling of the Custom-Made Products, improper application or the misalignment of parts;
  - 16.3.a.3 the result of vibration, radiation, erosion, corrosion, process contamination, abnormal process conditions, temperature and pressures, unusual surges or pulsation, fouling, ordinary wear, and others or any combination of the aforementioned causes not specifically allowed for in the design conditions;
  - 16.3.a.4 the Custom-Made Products being altered or modified in any respect by the Customer, or any one of its servants, agents, independent contractors, private or public carriers after the delivery of the Custom-Made Products to the Customer or its designated agent unless the alteration or modification has been specifically agreed in writing by Thermon.
- (b) Thermon shall not be liable for, and the Customer undertakes not to seek, damages of any sort whatsoever arising from a defect contained in the Custom-Made Products or any part thereof which for greater certainty, but no so as to limit the generality of the foregoing, shall include damages arising from lack of use, business interruptions or any other consequential damages.
- (c) Thermon has no obligation to repair or replace the Custom-Made Products under this Custom-Made Products Express Warranty if the Customer (or a third

party) has serviced, repaired or modified the Custom-Made Products without Thermon's express written consent.

- (d) The Customer acknowledges that Thermon will not be obliged to reimburse the Customer for any expenses incurred by the Customer (including transportation, service or labour costs) with respect to any defective Custom-Made Product (or part thereof) where the written authorization of Thermon was not first obtained.

### 16.4 Limitation of Thermon's Obligations

- (a) The Customer acknowledges and agrees that the terms and conditions set out in Paragraph 16 are a complete statement of the Customer's rights insofar as they relate to Custom-Made Products.
- (b) The Customer acknowledges and agrees that the warranty set forth in Paragraph 16.1 shall not apply to items of equipment or accessories incorporated in, or attached to, the Custom-Made Products which are not manufactured by Thermon, except where the selection of the said items of equipment or accessories are improper for the intended purpose of the said equipment or accessories;
- (c) The Customer acknowledges and agrees that the items of equipment or accessories described in Paragraph 16.4(b) are purchased subject only to the warranty of the actual manufacturer, if any and no other.
- (d) The Customer acknowledges Thermon's right to provide items of equipment or accessories described in Paragraph 16.4(b) manufactured by a different entity.
- (e) Thermon enters this Agreement with the Customer in the capacity of a manufacturer only and expresses no opinion on the adequacy of the specification provided to it by the Customer. Thermon is not responsible for any loss of damage caused wholly or in part by manufacturing Custom-Made Products in accordance with designs or specifications that prove to be inadequate for the intended purpose.
- (f) If the Customer's claim is not covered by the Custom-Made Products Express Warranty, or any other applicable warranty, Thermon will charge its usual rates for any service, repair or replacement requested by the Customer.
- (g) No personal representative of Thermon is authorized to make a representation or warranty in relation to Custom-Made Products that is inconsistent with the terms and conditions of this Paragraph 16.

16.5 The Custom-Made Express Products Warranty is in addition to any warranties imposed by Australian State and Federal legislation that cannot be excluded.

## 17. Specific Customer Responsibilities

- 17.1 The Customer undertakes to Thermon that it will:
  - (a) assume all charge(s) for any changes requested after signed approval drawings have been returned and accepted by Thermon;
  - (b) unload all Goods from the carrier, uncrate, inspect for damage and locate Goods to an indoor storage site or installation location. Notify Thermon in case of damage to shipped Goods. Any outdoor storage of the Goods detailed in this Agreement shall void any warranties extended;
  - (c) be responsible for site preparation including all foundation work and levelling of any flooring where the Goods are to be installed. Any existing structural modifications of any kind required to complete installation should be made prior to installation personnel arrival to eliminate unnecessary delays;
  - (d) remove any existing equipment where Goods are to be installed. Provide an area clean and free from any obstacles that may hamper or delay installation personnel;
  - (e) provide utilities as required to the locations(s) detailed in the approval drawings. It shall be the responsibility of the Customer to insure adequate utilities are available to allow proper operation of the Goods;

- (f) provide all roofing work including penetrations and curbing as required for proper equipment installation;
- (g) locate Goods at the equipment installation site. Any equipment required to position, locate or elevate Goods or personnel shall be provided by the Customer unless otherwise requested. In the event that Thermon agrees to perform such work, it is the responsibility of the Customer to provide a smooth and structurally adequate surface over which the Goods may be moved;
- (h) be responsible for any equipment transfer or unloading charges;
- (i) provide safety interlocks beyond standard safeties included in this Agreement as required by local, provincial, state or national codes including fire suppression system(s) either dry chemical/water sprinkler or other;
- (j) provide any ductwork, ventilation or other equipment and connections for same not detailed or included in this Agreement but necessary to complete installation;
- (k) obtain and pay for any permits required to transport, construct, install or operate any equipment provided for in this Agreement;
- (l) ensure that all and any national, state or local/municipal code requirements are met unless otherwise agreed to in writing by an authorised employee of Thermon. Without limiting the generality of the foregoing, this would include requirements for spill containment and waste disposals;
- (m) submit any requests for additions to, or changes to any equipment, terms, conditions or services provided for in this Agreement to Thermon in writing. These must be agreed to in writing by an authorised employee of Thermon. No other person or company has the right to modify or alter this Agreement after it has been submitted. No extra or additional work will be carried out by Thermon without the Customer's written instruction or purchase order, which must clearly show the price for such work;
- (n) where required by Thermon, review and approve drawings for the work submitted to the Customer for this purpose. The equipment manufacture will not commence until such approval is received by Thermon;
- (o) provide all necessary information relating to the desired location of the Goods. A site survey is not included in the price and will be charged extra to the Customer by Thermon;
- (p) provide a minimum of fourteen (14) days' notice to Thermon that installation, start up or training services are required; and
- (q) provide and pay for the following equipment services or work if required for the Goods being supplied by Thermon:
  - (a) Concrete
  - (b) Mechanical
  - (c) Electrical
  - (d) Plumbing
  - (e) Ventilation
  - (f) Fire Suppression
  - (g) Piping
  - (h) Insulation
  - (i) Instrumentation
  - (j) Any other work not specified in Thermon's agreement

17.2 Any labor included in this Agreement is based on installation occurring Monday through Friday during the hours 7 a.m. to 5 p.m. Holidays, weekends and hours prior to or later than the hours detailed in the affirmation statement will be billed separately on a detailed basis at a rate to be agreed upon in writing by Theron and the Customer and shall become permanent part of this Agreement. The installation price(s) included in this document have been based upon Thermon's personnel having free and unencumbered access to the Goods and installation site addressed in this Agreement. Any delays in completion of installation due to no fault of Thermon may be billed to cover lost time at the quoted rates. If installation is occurring during non-standard hours (standard hours are considered to be 7 a.m. - 5 p.m. Monday through Friday) or holidays or weekends an hourly

premium will be substituted in lieu of the standard hourly rate provided for in this Agreement.

17.3 Should testing be a requirement prior to purchase, any freight charges or special transportation costs incurred to transport products to be tested to the test location, and returned from the test location, shall be the sole responsibility of the Customer.

17.4 Goods malfunction or breakdown due to use of incorrect or non-specified spare parts shall be the responsibility of the Customer.

#### **18. Modifications**

18.1 Thermon reserves the right to modify or alter the design as quoted in an Agreement provided that such modification or alteration does not lessen the overall performance of the Goods or services as quoted in the Agreement or deviates from the Customer specifications.

#### **19. Subsequent Technological Improvement Made by the Company**

19.1 The Customer acknowledges that Thermon shall be free to make changes in the design or improvements of its products from time to time.

19.2 The Customer acknowledges that Thermon shall not be obliged to modify those Goods manufactured before the formulation of the changes in design or improvements of the products by Thermon.

#### **20. Intellectual Property**

20.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.

20.2 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.

20.3 The Customer must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.

20.4 Any Intellectual Property provided to the Customer by Thermon in connection with the Goods remains Thermon's exclusive property and must be returned to Thermon on demand and shall not be copied or communicated to any third party without Thermon's express prior written consent.

#### **21. Force Majeure**

21.1 Thermon is not liable in any way howsoever arising under the Agreement or these Terms to the extent that it is prevented from acting by circumstances beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts of terrorism, or acts of war. If an event of force majeure occurs, Thermon may suspend or terminate any Agreement by giving the Customer written notice.

#### **22. Trustees**

22.1 If the Customer is a trustee of a trust, the Customer acknowledges that the Trustee shall be liable for complying with these Terms and that in addition the assets of the Trust shall be available to meet payment for the Goods.

#### **23. Miscellaneous**

23.1 The law of Victoria from time to time governs the Terms and any Agreement. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Victoria, including the Federal Court of Australia sitting in Victoria (and of courts entitled to hear appeals from those Courts), in respect of any claims, proceedings or matters arising out of or in connection with these Terms or any Agreement.

23.2 Thermon's failure to enforce any of these Terms shall not be construed as a waiver of any of Thermon's rights.

23.3 If any of the Terms are unenforceable they shall be read down so as to be enforceable or, if they cannot be so read down, the unenforceable terms shall be severed from these Terms without affecting the enforceability of the remaining terms.

23.4 A notice must be in writing and handed personally or sent by facsimile, email 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 or email are deemed received upon successful transmission.

23.5 The Customer must notify Thermon of any proposed change in the shareholdings or directorships of the Customer at least 14 days prior to the change taking effect.

**24. Privacy Collection Notice**

24.1 The Customer can view the full text of Thermon's Privacy Policy and Privacy Collection Notice, which sets out how Thermon collects and deals with the Customer's personal information at [www.au.thermon.com/privacy-policy](http://www.au.thermon.com/privacy-policy) or upon request from Thermon.

24.2 Thermon's contact details for any issues relating to privacy are:

Telephone: +61 3 9762 6900

Email: [aus.sales@thermon.com](mailto:aus.sales@thermon.com)

Post: Attention Privacy Officer

Thermon Australia Pty Ltd

30 London Drive

Bayswater, Victoria 3153

