

Thermacore Europe Terms of Purchase

1. Interpretation

1.1. In these Terms:

“Buyer”	means Thermacore Europe Limited (CRN 03501481) registered in England and Wales having its registered office at 12 Wansbeck Business Park, Rotary Parkway, Ashington, Northumberland, NE63 8QW;
“Contract”	means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services;
“Delivery Address”	means the address stated on the Order;
“Goods”	means the goods (including any instalment of the goods or any part of them) described in the Order;
“Intellectual Rights”	Property patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;
“Order”	means the Buyer’s purchase order to which these Terms are annexed;
“Price”	means the price of the Goods and/or the charge for the Services;
“Seller”	means the person so described in the Order;
“Services”	means the services (if any) described in the Order;
“Specification”	includes any plans, drawings, data or

other information relating to the Goods or Services;

“Terms” means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“Tools” means all necessary materials or tools required for the execution of the Order, including but not limited to dies, gauges, jigs or fixtures;

“Writing” and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2. Any reference in these Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Terms are for convenience only and shall not affect their interpretation.

2. **Basis of purchase**

2.1. The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Terms.

2.2. These Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3. The Order will lapse unless unconditionally accepted by the Seller in Writing within seven days of its date.

2.4. No variation to the Order or these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

3. **Specifications**

3.1. The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

3.2. Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer

all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

- 3.3. The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.4. The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.
- 3.5. If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
- 3.6. The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4. **Tools**

- 4.1. Where the Buyer supplies Tools to the Seller in connection with the Order the Tools shall remain the property of the Buyer and the Seller shall, unless otherwise agreed in writing:
 - 4.1.1. be responsible for and make good to the Buyer any loss of or damage caused to the Tools whilst in the Seller's possession;
 - 4.1.2. ensure that the Tools are insured on the Company's behalf for their full price against all risks and at all times whilst in the Seller's possession to the reasonable satisfaction of the Buyer, and that the Buyer's interest in the Tools is noted on the Seller's policy of insurance and shall upon request produce the policy of insurance to the Buyer;
 - 4.1.3. ensure that the Tools are clearly marked as the Buyer's property and are used exclusively in connection with the fulfilment of the Buyer's Order;
 - 4.1.4. maintain the Tools in good and working order and will return said Tools to the Buyer immediately upon request by the Buyer; and
 - 4.1.5. allow the Buyer or its officers, employees, agents or authorised representatives to enter any premises where the Tools are from time to time located and retake

possession thereof.

- 4.2. Any Tools purchased by the Buyer from the Seller shall become the property of the Buyer upon purchase and shall be delivered to the location specified by the Buyer.

5. **Price of the goods and services**

- 5.1. The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

- 5.1.1. exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

- 5.1.2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

- 5.2. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

- 5.3. The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.

6. **Terms of payment**

- 6.1. The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

- 6.2. Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 30 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.

- 6.3. The Buyer may set off against the Price any sums owed to the Buyer by the Seller.

7. **Delivery**

- 7.1. The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

- 7.2. Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.

- 7.3. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

- 7.4. A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 7.5. The Goods shall be packaged so as to arrive with the Buyer in undamaged condition.
- 7.6. If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 7.7. The Buyer may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 7.8. The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 7.9. The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

8. **Risk and Property**

- 8.1. Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.
- 8.2. The property in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

9. **Warranties and liability**

- 9.1. The Seller warrants to the Buyer that the Goods:
 - 9.1.1. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;
 - 9.1.2. will be free from defects in design, material and workmanship;
 - 9.1.3. will correspond with any relevant Specification or sample; and
 - 9.1.4. will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 9.2. The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and

diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

- 9.3. Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
 - 9.3.1. to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or
 - 9.3.2. at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 9.4. The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
 - 9.4.1. breach of any warranty given by the Seller in relation to the Goods or the Services;
 - 9.4.2. any claim that the Goods infringe, or their importation, use or resale, infringes, the Intellectual Property Rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
 - 9.4.3. any liability under the Consumer Protection Act 1987 in respect of the Goods;
 - 9.4.4. any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
 - 9.4.5. any act or omission of any of the Seller's personnel in connection with the performance of the Services.
- 9.5. The Seller shall give assistance to the Buyer at the Seller's expense if a recall of the Goods in whatever form is required due to a defect in the Goods.
- 9.6. The Seller shall ensure that all Goods supplied to the Buyer are fully traceable by reference to batch numbers in order to facilitate a product recall should the same be required.
- 9.7. The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national

emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

10. **Termination**

10.1. The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

10.2. The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

10.2.1. the Seller makes any composition or voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) enters into amalgamation or reconstruction) or a moratorium comes into force in respect of the Seller (within the meaning of the Insolvency Act 1986); or

10.2.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or

10.2.3. any event analogous to any of those referred to in clauses 10.2.1 and 10.2.2 occurs in relation to the Seller in any jurisdiction; or

10.2.4. the Seller ceases, or threatens to cease, to carry on business; or

10.2.5. the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

11. **Confidentiality**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

12. **General**

- 12.1. The Buyer is a member of the group of companies whose holding company is [Thermacore Inc](#), and accordingly the Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.
- 12.2. The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 12.3. A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 12.4. No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.5. If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 12.6. Any dispute arising under or in connection with these Terms or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of [The Law Society of England & Wales](#), in accordance with the rules of [The Law Society of England & Wales](#).
- 12.7. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the non-exclusive jurisdiction of the English courts.