



Terms & Conditions of Business

The buyer's attention is in particular drawn to the provisions of condition 16.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who buys the Goods and/or Services from the Company.

Buyer's Equipment: any equipment, systems, cabling or facilities that are the subject of the Services.

Company: Thermascan Limited (Company Number 03055050) whose registered office is at The Granary, Crowhill Farm, Ravensden Road, Wilden, Bedford, Bedfordshire, MK44 2QS

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods or the provision of Services or both incorporating these conditions and the manufacturer's specification of the Goods and details of Services and Service delivery (if any)

Delivery Point: the place where delivery of the Goods is to take place

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Goods and Services: either Goods or Services or both according to the Contract.

Intellectual Property Rights: all patents, rights to inventions, copyright and related rights, trade marks, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, topography rights, moral 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 for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Services: any services agreed in the Contract to be provided to the Buyer by the Company (including any part or parts of them) which shall include Training where agreed.

Site Engineer: the Buyer's own site engineer or such other suitably qualified and informed representative having sufficient knowledge regarding the facilities at the Buyer's premises.

Training: any training agreed to be provided by the Company to the Buyer in relation to the Goods.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions whether express or implied.

2.2 These conditions apply to all the Company's supplies of Goods and Services. Any variation to these conditions and any representations about the Goods and Services shall have no effect unless expressly agreed in writing and signed by a Director of the Company. The Buyer acknowledges that it has not relied on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.3 Each order or acceptance of a quotation for Goods and Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods and Services subject to these conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods or starts to provide the Services to the Buyer as the case may be whereupon such order shall be deemed to be subject to these conditions.

- 2.5 The Buyer shall ensure that the terms of its order and any applicable specification of Goods or details of Services are complete and accurate.
- 2.6 Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION OF GOODS

- 3.1 The quantity of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 The description of the Goods shall be as set out in the specification which either the manufacturer specifies or as agreed.

4. DELIVERY OF GOODS

- 4.1 Delivery of the Goods shall take place at the Delivery Point.
- 4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations or refuses to take delivery:
 - (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.6 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY OF GOODS

- 5.1 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.
- 5.2 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE IN GOODS

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - (a) the Goods; and
 - (b) all other sums (including, without limitation, sums due in respect of Services) which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
 - (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary

liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. QUALITY OF GOODS

7.1 The Company is not the manufacturer of Goods. The Goods have the benefit of manufacturers warranty and warranty is limited to the value and remedy that the Company obtain from the manufacturer in respect of breach of the warranty. The Company will be obliged to take all reasonable steps to properly pursue and negotiate and if agreed commence proceedings against the manufacturer at the cost of the Buyer.

7.2 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

7.3 The Company shall not be liable for a breach of the warranty in condition 7.2 unless:

- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

7.4 The Company shall not be liable for a breach of the warranty in condition 7.2 if:

- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow the Company's oral or the manufacturer's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice or Training; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company.

7.5 If any of the Goods do not conform with the warranty in condition 7.2 the Company shall at its option procure the repair or replacement of such Goods by the manufacturer (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

7.6 If the Company complies with condition 7.5 it shall have no further liability for a breach of the warranty in condition 7.2 in respect of such Goods.

8. COMMENCEMENT OF SERVICES

8.1 Any Services shall be provided by the Company to the Buyer from the date specified in the Contract and shall continue to be supplied until the works are completed subject to condition 13.3(d).

9. COMPANY'S OBLIGATIONS IN RELATION TO SERVICES

9.1 The Company shall use reasonable endeavours to:

- (a) provide the Services in accordance in all material respects with the Contract;
- (b) undertake the Services in a timely manner, but any such dates shall be estimates only and time shall not be of the essence; and
- (c) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Buyer's premises and that have been communicated to it under condition 10.1(f), provided that it shall not be liable under any Contract if, as a result of such observation, it is in breach of any of its obligations under that Contract.

10. BUYER'S OBLIGATIONS IN RELATION TO SERVICES

10.1 The Buyer shall:

- (a) co-operate with the Company in all matters relating to the Services;
- (b) provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no

charge, access to the Buyer's premises, office accommodation, data and other facilities as requested by the Company;

- (c) procure that a Site Engineer be present at all times to assist the Company during the preparation of any quotation, or carrying out of any of the Services, and in identifying the Buyer's Equipment and the Buyer shall be responsible for all information provided by the Site Engineer;
 - (d) provide, in a timely manner such information and documentation as the Company may request and ensure that it is accurate in all material respects;
 - (e) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Company of all of its obligations and actions under this condition 10.1(e);
 - (f) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Buyer's premises;
- 10.2 Where any of the Buyer's Equipment is inaccessible or dangerous the Company shall not provide any Services in relation to that equipment. It shall be the Buyer's responsibility wherever possible to bring that equipment to such an accessible and/or safe standard as required by the Company before any Services are provided to it and if the Buyer's Equipment remains inaccessible or dangerous for a period of 90 days the Company shall be entitled to terminate the Contract.
- 10.3 If the Company's performance of its obligations in relation to any Services is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors or employees, or by virtue of condition 10.2, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.
- 10.4 The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations hereunder, subject to the Company confirming such costs, charges and losses to the Buyer in writing.
- 10.5 The Buyer shall not, without the prior written consent of the Company, at any time from the date on which these conditions were executed to the expiry of six months after the last date of supply of the Services, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services.
- 10.6 Any consent given by the Company in accordance with condition 10.4 shall be subject to the Buyer paying to the Company a sum equivalent to the full costs of training a replacement incoming employee, such training to be at a level or qualification equivalent to the outgoing employee.

11. PRICE OF GOODS

- 11.1 The price for the Goods shall be the price set out in the Contract.
- 11.2 The price for the Goods shall be exclusive of any VAT.

12. PRICE OF SERVICES

- 12.1 The Services are provided for a fixed price, and the total price for the Services shall be the amount set out in the Contract.
- 12.2 Any fixed price contained in the Contract excludes:
 - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Company; and
 - (b) VAT, which the Company shall add to its invoices at the appropriate rate.

13. PAYMENT FOR GOODS AND SERVICES

- 13.1 The Buyer shall pay each invoice submitted to it by the Company, in full and in cleared funds, on the due date specified in the invoice or Contract and if none is specified within 30 days of the date of invoice.
- 13.2 No payment shall be deemed to have been received until the Company has received cleared funds in pounds sterling or Euros as appropriate.
- 13.3 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Company on the due date, the Company may:
 - (a) withdraw any discount agreed;
 - (b) charge interest on unpaid amounts at 3% above base rate of Barclays Bank Plc for the time being calculated on a daily basis at monthly rests or if applicable and if greater the interest rate chargeable pursuant to the Late Payment of Commercial Debts (Interest) Act 1998; or
 - (c) require payment in advance of delivery of any undelivered Goods or incomplete Services; or
 - (d) refuse to make delivery of any undelivered Goods or to complete any incomplete Services; or
 - (e) withhold any reports, documentation or information produced by the Company for the Buyer; and
 - (f) terminate this Agreement or other agreement with the Buyer; or

- (g) withdraw credit terms; or
 - (h) any of the above whether in combination or otherwise.
- 13.4 Time for payment shall be of the essence.
- 13.5 All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition 13.5 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 13.6 The Company may, without prejudice to any other rights it may have, set off any liability of the Buyer to the Company against any liability of the Company to the Buyer.
- 13.7 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 As between the Company and the Buyer, all Intellectual Property Rights and all other rights in the Goods and Services (which shall include any products and materials pre-existing or developed by the Company or its agents, subcontractors, consultants and employees in relation to the Goods and/or Services in any form, including computer programs, data, reports and specifications (including drafts)) shall be owned by the Company.
- 14.2 The Buyer acknowledges that, where the Company does not own any pre-existing materials or Intellectual Property Rights in relation to Goods and Services, the Buyer's use of rights in them is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Buyer.
- 14.3 Subject to condition 14.2 the Company licenses all such rights to the Buyer on a non-exclusive, worldwide basis to such extent as is necessary to enable the Buyer to make reasonable use of the Goods and the Services. If the Contract terminates, this licence shall automatically terminate.
- 14.4 The Buyer shall indemnify the Company in respect of all claims demands liabilities costs charges and expenses incurred by the Company as a result of infringement of any Intellectual Property Rights relating to the Goods and Services by the Buyer.

15. TERMINATION

- 15.1 On termination of a Contract for any reason:
- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
 - (b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

15.2 On cancellation of a Contract by the Buyer after acceptance by the Company, the Buyer shall be liable to pay to the Company on demand a restocking charge of 15% of the price of the Goods in the Contract within 14 days of cancellation.

16. LIMITATION OF LIABILITY

- 16.1 Subject to condition 4, condition 5 and condition,7 the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
 - (c) any use made by the Buyer of any of the Services; and
 - (d) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 16.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 or as restated in condition 7.2 and condition 16.3(e)) are, to the fullest extent permitted by law, excluded from the Contract.
- 16.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation; or
 - (e) for any liability incurred by the Buyer as a result of any breach by the Company in relation to the provision of Services of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 16.4 Subject to condition 16.2 and condition 16.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price under the Contract ; and

(b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

17. FORCE MAJEURE

The Company shall not be liable for any failure or delay in performance of the Contract which is caused by circumstances beyond its reasonable control.

18. VARIATION

Subject to condition 2.2 no variation of the Contract or these conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

19. WAIVER

A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

20. SEVERANCE

The invalidity or unenforceability for any reason of any term set out in this document or part thereof shall not prejudice or effect the validity or enforceability of the remainder of that term or these terms generally.

21. ASSIGNMENT

The Buyer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. RIGHTS OF THIRD PARTIES

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

24. NOTICES

Any notice may be given in the form of a fax message or pre-paid first class recorded delivery post addressed to the registered or principal office for the time being of the recipient.

25. GOVERNING LAW AND JURISDICTION

These terms shall be governed by the laws of England and Wales.