

THERMOPATCH UK

A DIVISION OF THERMOPATCH SPORTS LIMITED

TERMS & CONDITIONS OF SALE

CONDITIONS OF SALE Any quotation or acknowledgement of order issued by Thermopatch UK – A Division of Thermopatch Sports Limited, ("the Company") shall unless specifically agreed in writing by a member of the Company, be subject to the following terms and conditions.

1. **CONDITIONS.** These conditions, together with any specific conditions on our quotation or acknowledgement of order, shall constitute the entire contract between the Company and the Buyer, and shall override and supersede any previous agreements or arrangements, and exclude any conditions at any time imposed by the Buyer unless expressly incorporated by the Company.

2. **DEFINITION OF GOODS.** 'Goods' means the goods (including any instalment of the goods or any parts of them) which the Company is to supply in accordance with these Conditions.

3. **QUOTATIONS.** No quotation constitutes an offer or shall be binding by the Company. The Buyer's order shall amount to an offer which may be accepted by the Company on its official acknowledgement of order form.

4. **PRICES.** Quotations are based on the prices ruling at the date of quotation. The contract price shall, however, unless otherwise agreed in writing, be strictly net and the price ruling at the date of despatch.

5. **VARIATIONS.** (a) In addition to the price as set out in 3 above the Company shall have the right to charge and be paid the amount of any increase in costs arising after the date the order is acknowledged as a result of:

(i) Any alteration in the Buyers requirements. (ii) The Buyers instructions or lack of instructions. (iii) Unsuitable or unprepared sites, inadequate access or lack of services. (iv) Any interruptions, delays, overtime work, mistakes or any other cause for which the Company is not solely responsible. (v) Any increase in any tax, duty or levy imposed on goods or services, or affecting the contract price in any manner, including VAT.

(b) The Company may also charge and be paid all costs and expenses, including overheads and profit, resulting from the omission of work previously ordered and any abortive work carried out or goods ordered by the Company prior to any cancellation thereof; (whether by the Company or the Buyer).

c) All quotations are subject to the availability of goods and materials and the Company shall have the right to substitute other goods or materials which in the Company's opinion are of similar or equivalent quality and to vary the contract price accordingly.

6. **DELIVERY CHARGES.** All prices quoted and contracted are ex-works prices unless otherwise agreed in writing with the Company. Unless otherwise requested by the Buyer, the Company will arrange all packing, transportation and delivery to the destination specified by the Buyer, the cost of which will be payable by the Buyer in addition to the contract price. The Buyer will provide all labour and equipment for unloading the goods at their destination and positioning on site.

7. **DELIVERY.** (a) Unless otherwise agreed in writing any time quoted for delivery is in expected working weeks, and is to be reckoned from the date on the Company's acknowledgement of the order or (if later) the date upon which the Company receives all information enabling it to proceed with the order.

(b) Any time or date given is an estimate only. The Company reserve the right to amend the date without prior notification, and shall in no event be liable for any direct, indirect or consequential losses

incurred or suffered by the Buyer as a result of the Company's inability or failure for any reason to meet specified delivery dates.

(c) The delivery period has been calculated and is dependent on a 48 hour response to drawings sent for approval. Any delays in this respect may affect the delivery of the equipment.

(d) The Company reserves the right to deliver goods by instalments. Each instalment shall be treated as a separate contract save that the deliveries of further instalments may be withheld until the goods compromised in earlier instalments have been paid in full.

(e) Where goods are held by the Company awaiting delivery instructions they may be subject to storage charges which will be added to the invoice for the goods and subject to the Company's normal terms of payment.

(f) If, for whatever reason other than the Company's sole default, the Buyer fails to take delivery in accordance with the terms of the contract (or, if no delivery dates are specified, upon such date or dates as the Company may in its unfettered discretion, by not less than 14 days prior written notice, specify) payment for the goods shall nevertheless be made by the Buyer as if delivery had been so taken and the Buyer must pay in addition to the price and in accordance with the Company's normal terms of payment of the price for all costs of demurrage, transport, storage and all other additional expenses or loss incurred. Immediately upon the date or dates for delivery (whether specified in the contract or ascertained as above) the risk in the goods passes to the buyer and any loss or damage to or deterioration of the goods howsoever caused shall be the Buyer's responsibility. The passing of property in the goods to the Buyer shall nevertheless be governed by clause 10 hereof as if the goods had actually been delivered upon the date upon which delivery should have been taken and for the purpose of the application of clause 10 to this sub-clause the costs or demurrage, transport, storage and all other additional expenses or loss incurred by the Company shall be added to the price of the goods.

(g) Notwithstanding anything herein before contained the Company shall have the right to cancel or delay deliveries or to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing or delivering by normal route or means of delivery the goods covered by this contract or any part thereof through any circumstances beyond its reasonable control, including but not limited to war, riot, government requisition of any, suspension, loss of means of transport, strikes, lock-outs, labour disputes, fire, explosion, flood, accident, failure of any third party to supply the Company, breakdown of plant or machinery, or anything directly or indirectly interfering with the raw materials or the manufacture, supply, shipment, arrival or delivery of the goods.

(h) If the buyer fails to take delivery when delivery falls due, the Company shall be considered to have tendered and the Buyer to have refused to accept such delivery.

8. GOODS IN TRANSIT. (a) No claim in respect of any loss or damage to goods in transit or any shortage on delivery will be accepted unless notice of such claim shall have been marked upon any drivers delivery ticket or invoice and the Company also receives separate written notice of damage or shortage within 3 days of the date of arrival of the goods or written notice of loss within 14 days of the date of the invoice. In addition all conditions imposed by the carrier must be complied with and such other steps are to be taken by the Buyer (including where applicable giving shorter notice to the carrier concerned) as are necessary to preserve a claim against the carrier.

(b) No liability will be accepted for any damage in transit of which notice is given after the goods have been handled in any way by the buyer.

9. RETURNED GOODS. The Company may in its absolute discretion accept goods returned to its works or representatives provided that unless agreed in writing by the Company prior to the despatch by the buyer of such goods:

(a) The cost of packing, carriage and transportation will be borne by the Buyer of such goods:

(b) The Company shall be under no obligations or liability to give to the Buyer credit for any returned goods.

(c) If the Company in its absolute discretion decides to give credit for returned goods to the Buyer there shall be deducted from the amount of any such credit a minimum restocking charge of 20% of the original net invoice value of the goods plus any refurbishing costs which the Company may in its absolute discretion deem necessary to bring the goods to a condition suitable for resale.

10. TERMS OF PAYMENT. Payment of the contract price and any delivery charges shall (unless otherwise agreed in writing) be made to the Company in four payments 30% with order, 50% on despatch of equipment, 15% on practical completion and 5% on handover. In the event of the Buyer failing to make any payment within such period the Company may in its own unfettered discretion without prejudice to any other right or remedy available to it, suspend or cancel any further deliveries to the Buyer, whether under this contract or any other contract then subsisting between the Company and the Buyer.

11. PROPERTY AND RISKS IN GOODS. (a) The risk in the goods shall pass to the Buyer at the point of delivery referred to in this contract and the Company shall have no responsibility for the safety of the goods thereafter. Unless otherwise agreed, the point of delivery shall be the time when the goods are uplifted for the purpose of removal from the Company's premises.

(b) The property in the goods shall not pass to the Buyer until the Company has received in cash or clear funds payment in full of the price of the goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

(c) Until such time as the property in the goods passes to the Buyer, the Company shall be entitled at any time to require the Buyer to deliver the goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the goods are stored and repossess the goods. The cost of such recovery or recall shall be borne by the Buyer.

(d) The Buyer shall from the date of delivery also be responsible for maintenance and care of the goods and for any shortage costs in respect thereof. The Buyer will indemnify the Company against any depreciation in the goods or their value as well as any damage caused to the goods should payment in full not be made.

12. INTEREST ON OVERDUE ACCOUNTS. The Company shall be entitled to charge and the Buyer shall pay interest on any account or other monies due from the Buyer which is not paid by the Buyer on or before the due date as well after as before any judgement at a rate equal to 5 per cent above the published Finance House Base Rate for the time being.

13. DEFAULT BY BUYER. (a) If the Buyer shall fail to pay the purchase price or any delivery charge in full in accordance with this contract or to fulfil any of its obligations hereunder or if any distress or execution shall be levied upon the Buyer's property or assets, or the buyer shall make or offer to make any arrangements or composition with its creditors or commit any act of bankruptcy, or if any petition of receiving order in bankruptcy shall be presented or made against the Buyer, or if the Buyer being a limited Company any resolution or petition to wind up such Company's business (other than for the purpose of amalgamation or reconstruction shall be passed or presented or if a receiver of such Company's undertaking, property or assets or any part thereof shall be appointed, or if it at any time comes to the notice of the Company that the Buyer is or is likely to be unable to meet his obligations in full as they fall due, the Company shall have the right forthwith to terminate any contract then subsisting with the Buyer and upon written notice of such termination being posted by the Company to the Buyer's last known address, this contract shall be deemed to have been terminated but without prejudice to any claim right or remedy which may be available to the Company in law or under the provisions hereof.

(b) Upon any termination of this contract pursuant to sub-clause (a) above the Company shall (without prejudice to any other rights or remedies available to it) be entitled if it so elects to repossess at the Buyer's expense any goods which may have been delivered to but not paid for by the Buyer.

14. LIMITATION OF LIABILITY. The liability of the Company in respect of any defect in or failure of goods supplied shall only extend to goods wholly or substantially manufactured by the Company and shall be limited to the repair or replacements (at the Company's premises) of defects which in the Company's opinion arise solely from faulty design, materials or workmanship and are not attributable

in whole or part of any error on the part of the Buyer or any third party, provided that claims in respect of such defects will only be entertained by the Company if such defect or defects appear and written notice thereof is given to the Company within 12 months, or 2000 hours of operation, of delivery whichever is the shorter. In cases where it is impracticable to bring goods or materials alleged to be defective to the Company's premises they are subject in all respects to the same limitations set forth earlier in this clause. The Company will repair or replace in the same manner and to the same extent at the place where the goods shall have been installed by or on behalf of the Buyer, provided that the additional expense incurred by repair or replacement at such place shall be borne by the Buyer. Save as provided above all warranties, conditions, representations and liabilities (whether express or implied) on the part of the Company in relation to any goods or services supplied hereunder are hereby expressly excluded, and the Company shall not be liable for any loss (whether direct or indirect or consequential) expense or damage of whatsoever kind arising as a result of or in connection with the supply of services or goods hereunder or their use or anything done or omitted to be done in connection therewith. The Company will, in respect of goods which are not of its own manufacture, use all reasonable endeavours to pass on to the Buyer the benefit of any guarantee provided by the supplier or manufacturer of such goods, but not as to impose on the Company any liability in respect thereof.

15. INSTALLATION. In cases where the contract includes installation by the Company, it will unless specified in the quotation or acceptance include supervision by the foreman or chargehand only. The Buyer shall provide adequate and safe access to the place of installation and all necessary services and carriage and do everything necessary to prepare the place of installation and to protect any workman employed by the Company and any goods and equipment after delivery. As between the Company and the Buyer the Company will only be liable for damage or injury to the Buyer or third parties or their property by the negligence of the Company or its servants, in circumstances where such damage or injury is not caused by or does not arise, wholly or partly, from the act or omission of any person other than the Company and its servants or agents and is not due to circumstances over which the Company has no control, and the Company's total liability for any such loss, damage or injury shall not in any event exceed the total price payable under this contract; the Buyer shall indemnify the Company against any claims arising in other circumstances or in excess of such limit. Any person working on such installations shall, as between the Company and the Buyer be deemed to be the Buyer's employee, unless that person is paid directly by the Company and is normally employed by and subject to control of the Company.

16. SEPARATE ITEMS. The Company may if it so elects treat each item on a quotation or acknowledgement or order whether separately priced or not as the subject of a separate contract and in such cases these conditions shall apply independently to each item.

17. CANCELLATION OF ORDERS. The contract and all accepted orders may not be cancelled without the prior written permission of the Company (which permission will only be given upon terms which will indemnify the Company against all loss, cost and expense). Goods made to special order cannot be cancelled. Failing cancellation in manner aforesaid the full price payable by virtue of this contract, including all additional costs and expenses payable by virtue of Clause 4 hereof shall forthwith become payable.

18. DRAWINGS, etc. Unless otherwise agreed by the Company in writing, any data, printed matter, designs, drawings, specifications or catalogues, which are the property of the Company, who holds the copyright therein and which are supplied to the Buyer, whether before or after the date of order are subject to alteration without notice and are not contractual documents but are intended solely to represent a general idea of the goods and/or services described herein. All such data, printed matter, drawings, specifications or catalogues are the property of the Company who holds the copyright therein and they or any of them may not be copied or used by the Buyer or anyone on his behalf without the express written permission of the Company either before or after the issue of the Company's acknowledgement of order form.

19. ADVICE. (a) Whether or not any contract or acknowledged order between the Company and the Buyer makes provision therefore, any advice, information or assistance provided by the Company or any person employed by the Company or upon its behalf, whether such advice, information or assistance is oral or in writing, is provided in good faith but is without contractual effect.

(b) If the Buyer desires that any advice, information or assistance which the Company might be prepared to provide should have contractual effect in relation to any contract or acknowledgement or order (whether existing or prospective) then the Buyer must make formal written application therefore referring to this condition. The Company will consider such request and may provide such advice, information or assistance as the Company in its absolute and unfettered discretion sees fit and will authenticate such information by the signature of a director of the Company. Only advice, information or assistance provided by the Company pursuant to and in strict accordance with this sub-clause shall be of contractual effect and binding upon the Company.

(c) Advice, information or assistance provided under and for the purposes of sub-clause (b) above shall be of contractual effect and binding upon the Company only in respect of the contract or acknowledgement order in respect of which it was provided.

20. **WAIVER.** Any express or implied waiver or release or purported waiver or release by the Company of any term or condition of this contract or of any breach or default by the Buyer shall apply only in respect of the matters waived or released at the time when it is made or given. No such waiver or release shall constitute a continuing waiver or release in respect of any other or later matter nor shall it prevent the Company from acting upon any such other or later matter, or breach or default or from enforcing any of the provisions of this contract in relation to any other matter, breach or default.

21. **APPLICABLE LAW.** This contract and these conditions shall be construed according to and governed by the Law of England, and the parties hereby submit to the jurisdiction of the English courts.

22. **GENERAL.** The Buyer agrees to indemnify and keep indemnified the Company against all reasonable fees, costs and other expenses incurred by the Company in enforcing this contract or any of its terms or provisions.

23. All paragraphs and other headings contained in these conditions are for reference purposes only and shall not in any way affect the meaning or interpretation of this contract.