

GENERAL TERMS AND CONDITIONS of Thermopatch B.V. (39032204), a private company with limited liability in Almere

Article 1 Applicability

- 1.1 These General Conditions shall apply to any legal acts performed by Thermopatch B.V. and to any agreements concluded with Thermopatch B.V.
- 1.2 In the event that an agreement concluded with Thermopatch B.V. contains provisions deviating from these General Conditions, the provisions contained in the agreement will prevail, while all other provisions of these General Conditions shall remain in full force.
- 1.3 In the event of nullity of one or more of these conditions, the other provisions shall remain in full force. The Parties shall consult about conditions which are possibly null and void, in order to make an alternative arrangement, with the purpose of maintaining the tenor of the agreement and of these conditions.

Article 2 Offers

Unless a different period is specifically agreed, offers made by Thermopatch B.V. are open for acceptance for a period of two months after the date thereof, but they are made without any obligation. Thermopatch B.V. has the right to revoke offers.

Article 3 Delivery and Risk

- 3.1 The delivery period given by Thermopatch B.V. shall not be deemed to be a firm delivery date, unless expressly agreed otherwise. When exceeding this period Thermopatch B.V. shall therefore be given notice of default in writing thereof.
- 3.2 The delivery period given by Thermopatch B.V. does not commence before any data and/or materials, within reason required for the performance of the agreement, are known to it and/or received by it.
- 3.3 Delivery shall take place at the agreed address and in accordance with the agreed ICC Incoterm.
- 3.4 Thermopatch B.V. has the right to postpone delivery of the goods in the event that the Buyer is in default with payment of the relevant sum of money due, as well as in the event that the Buyer is in default with payment of a sum of money pertaining to other agreements concluded between Thermopatch B.V. and the Buyer and also in the event that the Buyer is in default with furnishing security we required pursuant to these General Conditions.

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- 3.5 The purchased goods are at the Buyer's risk, from the moment the goods are received by (or on behalf of) the Buyer or from the moment as follows from the agreed ICC Incoterm, whichever comes first. The goods shall also be at the Buyer's risk from the moment that as a result from any act or omission of Buyer and/or as a result of any circumstance attributable to Buyer, delivery by Thermopatch B.V. is obstructed.

Article 4 Price

The prices quoted by Thermopatch B.V. are excluding turnover tax and in EURO and exclusive costs, unless stated otherwise.

Article 5 Payment

- 5.1 Payment shall be made not later than 30 days after the date of invoice unless otherwise agreed. With payment through a bank the payment date shall be the date payment is credited into the bank account of Thermopatch B.V.
- 5.2 In the event that payment has taken place within 10 days, the Buyer/Principal is entitled to a payment discount of 2 %.
- 5.3 When exceeding the term of payment the Buyer/Principal shall be in default by operation of law and Thermopatch B.V. shall have the right to dissolve the agreement, without prejudice to any other rights Thermopatch B.V. may have from the agreement, these conditions and the Law.
- 5.4 Payment of an invoice shall firstly go to reduce the interest due, then to reduce cost (including – but not limited to judicial and/or extrajudicial costs incurred by Thermopatch B.V.) and finally to reduce the principal amounts due outstanding over the longest period of time and the accrued interest, even when the Buyer states that the payment pertains to a different debt.
- 5.5 In the event that the Buyer has not paid within 30 days, the Buyer shall be under an obligation to pay the statutory interest rate over the amount still to be paid over the period that the Buyer is in default with paying, which interest shall then be due from the date of invoice.
- 5.6 If payment of the amount due is not made or is not made on time and Thermopatch B.V. shall incur related (extra)judicial costs to obtain payment, the Buyer shall be under an obligation to pay Thermopatch B.V. compensation of the real costs incurred by it, including (inter alia) attorney fees and expenses, bailiff fees and expenses and court fees.

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Article 6 Retention of title and pledge

- 6.1 Thermopatch B.V. retains ownership of any goods pursuant to a contract of sale delivered or to be delivered by us to the Buyer, until the purchase price of these goods is paid in full. In the event that pursuant to such an agreement Thermopatch B.V. also performed work for the Buyer and for the Buyer's account, the aforementioned retained ownership applies until the Buyer has also paid the invoice from Thermopatch B.V. therewith related.
- 6.2 As long as the ownership of the delivered goods has not been transferred to the Buyer, the Buyer may not pledge the goods or grant any rights to the delivered goods to any third party, subject to the provisions of paragraph 3 of this article.
- 6.3 The Buyer is authorised to sell and transfer the goods delivered under retention of title to third parties, acting in the ordinary course of its business. When selling on credit the Buyer shall stipulate a retention of title to its customers in accordance with the provisions of article 6.1. The Buyer shall furthermore undertake not to assign or to pledge claims in connection herewith against its customers without prior written consent from Thermopatch B.V. Furthermore the Buyer undertakes, as soon as Thermopatch B.V. has expressed the wish with respect thereto, to pledge the aforementioned claims against its customers to Thermopatch B.V. as an additional security for its claims, of whatever nature, against the Buyer.
- 6.4 On delivered goods that through payment have been transferred to the ownership of the Buyer and are still in the hands of the Buyer, Thermopatch B.V. now for then retains the rights of pledge as referred to in article 3: 237 Netherlands Civil Code as an additional security for claims other than the claims referred to in paragraph 1 of this article, that Thermopatch B.V. may have or acquire, for whatever reason, against the Buyer. The Buyer undertakes to – if so requested by Thermopatch B.V. – without delay take all steps necessary in relation to said pledge, including (but not limited to) signing of a deed of pledge.
- 6.5 The Buyer shall keep separately the goods delivered under retention of title with due care and recognisable as the property of Thermopatch B.V. The Buyer shall insure the goods for the duration of the retained ownership against damage by fire, explosion and water as well as theft and shall allow Thermopatch B.V. inspection of these insurance policies on its first demand. Any claims of the Buyer under the aforementioned insurance against the insurers of the goods shall be pledged to Thermopatch B.V. as soon as it notifies the Buyer that this is required by it, in the manner as referred to in article 3:239 Netherlands Civil Code as an additional security for its claims against the Buyer.

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- 6.6 In the event that the Buyer fails to fulfil its payment obligations towards Thermopatch B.V. or if Thermopatch B.V. has well-founded grounds to fear its failure to fulfil these obligations, Thermopatch B.V. shall have the right to repossess the goods delivered under retention of title. The Buyer will deliver the repossessed goods to Thermopatch B.V. within 3 days following the request from Thermopatch B.V. to that effect. If the Buyer is credited partially this shall be done at the market value of the goods at that particular moment and it shall not exceed the original purchase price. The costs incurred by repossession shall be deducted from the aforementioned credit entry.
- 6.7 In the event that repossessed goods are not delivered to Thermopatch B.V. within the period specified in article 6.6, Buyer shall be under an obligation to pay us an immediately payable penalty of 10 % of the amount due for each day or part thereof that the Buyer is in default with the performance of its obligation to return the goods to Thermopatch B.V. and enable us to exercise its rights in respect of the retention of title, the foregoing without prejudice to any other rights Thermopatch B.V. may have from the agreement concluded with the Buyer, the Law and these conditions.

Article 7 Complaints

- 7.1 Complaints made in respect of defects in delivered goods which are visible at or shortly after delivery or should come to light after some research, shall be submitted to Thermopatch B.V. in writing by the Buyer within one month after delivery, in default whereof the Buyer shall lose all claim to replacement, repair, damages and/or dissolution.
- 7.2 Complaints about defects in delivered goods which may only be discovered after the lapse of time shall be submitted in writing to Thermopatch B.V. by the Buyer within 14 days after the Buyer discovered the defect or within reason could have discovered the defect. The complaints referred to in this article shall be disallowed after the lapse of one year after delivery.
- 7.3 In the event that a complaint regarding delivered goods is considered by Thermopatch B.V. to be well-founded it cannot be held to repair and/or replace the affected goods until the defective goods are returned to Thermopatch B.V. by the Buyer.
- 7.4 If the complaint is well-founded, at the discretion of Thermopatch B.V., it decides whether to repair or replace and furthermore it shall have the right to refund the purchase price instead or to give a discount on the purchase price.
- 7.5 In the event of complaints the undisputed part of the invoice of Thermopatch B.V. (the part of the invoice that does not pertain to the affected goods) shall always be paid on the payment date indicated.

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Article 8 Warranty

- 8.1 Thermopatch B.V. warrants the proper performance of purchased new machines/equipment over a period of twelve months, to be calculated from the moment of delivery. The warranty implies that any parts that may become defective – to the point a normal operation of the machines/equipment is not possible - on account of a faulty construction shall be repaired without costs or shall be replaced with other parts, all this at the choice of the Buyer.
- 8.2 Defects in the following parts are not covered by the warranty: teflon plates, rubber cushion, printing plates, bimetallic thermostats, ink ribbon guide plates, print heads and thermometers.
- 8.3 The claim under a warranty shall lapse if:
- a) the Buyer does not inform us of the defect not later than 14 days after the Buyer discovered the defect or should have and/or reasonably could have discovered the defect;
 - b) the Buyer does not without delay enable us to inspect and/or repair the defect;
 - c) third parties (including the Buyer) have performed work on the purchased goods without prior written consent from Thermopatch B.V.;
 - d) the machine/equipment is used for other purposes than for which it was developed;
 - e) the defect is caused by not (properly) observing the operating instructions and/or any other wrong use.

Article 9 operating instructions and liability

- 9.1 When delivering purchased machines/equipment and emblems Thermopatch B.V. provides the Buyer with operating instructions. Should the Buyer not have received these operating instructions then the Buyer shall inform Thermopatch B.V. thereof forthwith, whereupon Thermopatch B.V. shall send the Buyer the operating instructions.
- 9.2 In the event that the Buyer acts contrary to the operating instructions this shall be fully at its own risk and Thermopatch B.V. shall not be liable for any ensuing damage, irrespective of the nature thereof.

Article 10 Liability

- 10.1 Thermopatch B.V. and the third party/parties deployed by Thermopatch B.V. are not liable for any damages on the part of Buyer, including loss of sales or profits, except in the case of malice or gross negligence on the part of Thermopatch B.V.
- 10.2 If and to the extent that – notwithstanding article 10.1 – Thermopatch B.V. is liable, its liability shall be limited to the amounts covered by its business liability insurance.

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- 10.3 If and to the extent that – notwithstanding article 10.1 – Thermopatch B.V. is liable and its business liability insurer for any reason does not proceed to pay, or if the damage is not covered by its business liability insurance, then its liability shall be limited to the nett amounts invoiced by Thermopatch B.V. to the Buyer under the agreement(s) to which the damages pertain.
- 10.4 Contrary to the preceding paragraphs Thermopatch B.V. shall accept no liability for damages caused by exceeding delivery dates.
- 10.5 Claims regarding damages caused by an attributable failure by Thermopatch B.V. to fulfil its obligation(s) or by a wrongful act shall be barred by the lapse of one year after delivery.
- 10.6 Thermopatch B.V. shall not be liable for damages caused by force majeure.

Article 11 Force majeure

- 11.1 Force majeure shall include and shall therefore not exclusively be established as a result of: any failure from suppliers of Thermopatch B.V. to fulfil an obligation towards it which prevents Thermopatch B.V., temporary or permanently, from fulfilling its obligations towards the Buyer, impeding measures from local authorities and foreign governments, fire or other destruction in the company of Thermopatch B.V., sabotage, sit-down strikes and industrial action both in the company of Thermopatch B.V. and in the companies of its suppliers, power failures, serious traffic jams and large-scale absenteeism due to illness of employees of Thermopatch B.V.
- 11.2 During force majeure the delivery obligations of Thermopatch B.V. and its other obligations shall be suspended and the Buyer shall not be entitled to (claim) damages and/or dissolve the agreement. In the event that the period in which Thermopatch B.V. shall not be able to fulfil its obligations because of force majeure shall exceed a period of two months, both the Parties have the right to dissolve the agreement without judicial intervention, and in this event no obligation to pay damages shall exist.
- 11.3 If Thermopatch B.V. has partly fulfilled its obligations when the force majeure takes place, or if Thermopatch B.V. then shall be able to only partly fulfil its obligations, it shall have the right to invoice separately the delivered part or the part still to be delivered and the Buyer shall pay the relevant invoice as if it regards a separate agreement.
- 11.4 Thermopatch B.V. also shall have the right to invoke force majeure when the non-attributable circumstance that prevents the fulfilment of its obligation takes place after it should have fulfilled its obligations.

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Article 12 Non-performance and dissolution

- 12.1 In the event that the Buyer fails to perform an act with which the Buyer shall co-operate with delivery, then the ensuing costs of for instance storage and supervision shall be for its account.
- 12.2 In the event that the Buyer fails to pay Thermopatch B.V. any amount due or does not timely and/or properly perform, totally or partially, any other obligation arising from the agreement, when the Buyer applies for a suspension of payment or is declared in a state of liquidation as well as when the Buyer is served with a writ of any attachment, Thermopatch B.V. shall have the right to dissolve the agreement without notice of default and/or judicial intervention, without prejudice to its right to claim reimbursement of costs, damages and interests.

Article 13 (Providing) Information

With assignment agreements, to carry out the assignment in a correct manner, Thermopatch B.V. depends on the correctness and the completeness of the assignment given by the Principal and the information given within this framework. If within the framework of an assignment agreement between Thermopatch B.V. and the Principal there is a difference of opinion about the question whether or not Thermopatch B.V. has carried out the assignment in a correct manner, the burden of proof regarding the contents of the assignment given and the completeness and the correctness of the information given by the Principal within this framework shall be on the Principal.

Article 14 Industrial property rights and intellectual property rights

By giving an assignment to multiply or reproduce any design, form or model, not originating from the company of Thermopatch B.V., the Buyer/Principal declares that by carrying out this assignment Thermopatch B.V. does not infringe any third parties' industrial or intellectual property rights. The Buyer/Principal grants Thermopatch B.V. a license – in as far as necessary – to perform such multiplication and/or reproduction and shall fully indemnify and hold harmless Thermopatch B.V. and, judicially and extra judicially, against any and all claims from third parties regarding damages for any possible unlawful multiplying or reproducing and/or infringement upon intellectual and industrial property rights of third parties.

Article 15 Final provisions

- 15.1 Any disputes shall be submitted to the competent court in Amsterdam.
- 15.2 Netherlands law shall govern any agreements concluded with us and any disputes arising therefrom, excluding the applicability of the United Nations Convention on Contracts for the International Sale of Goods (11 April 1980).

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- 15.3 The Parties shall maintain confidentiality regarding any data, facts and events of which they have knowledge in connection with the conclusion and the fulfilment of the agreement and of which disclosure may damage the interests of the other party. The Buyer/Principal shall under no circumstance use information the Buyer/Principal has obtained from Thermopatch B.V., in whatever manner, expressly meaning data regarding clients of Thermopatch B.V., unless Thermopatch B.V. has given prior written permission.
- 15.4 The Buyer/Principal shall not approach employees of Thermopatch B.V., directly or indirectly, in order to persuade them to enter its employment, or otherwise to undertake recruitment activities regarding employees of Thermopatch B.V., under penalty of a fine forthwith due and payable of €5,000.00 for every violation of this prohibition, which fine shall not be subject to moderation.

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