

General Conditions of Sale and Delivery of Triple E BV

1. General

- 1.1 These General Conditions of Sale and Delivery shall be an integral part of the contract of purchase, between the seller, hereinafter referred to as 'Triple E' and the buyer, hereinafter referred to as 'the Buyer'.
- 1.2 Conflicting or deviating conditions of purchase or other reservations made by the Buyer shall not be effective unless Triple E has expressly accepted them in writing (e.g. in an order confirmation or contract).

2. Offers, Orders

- 2.1. Triple E's offers shall not be binding with respect to price, quantity, delivery time and availability.
- 2.2. The Buyer's orders shall become binding on Triple E upon receipt by the Buyer of Triple E's written order confirmation (or invoice or delivery note).

3. Invoicing

- 3.1. The invoiced prices shall to Triple E's effective prices at the time of delivery.
- 3.2. Should Triple E, in the time between conclusion of the contract and delivery, effect a general price increase, the Buyer shall have the right to withdraw from the contract within two weeks of having been informed thereof. The right of withdrawal shall not apply to long-term supply contracts (contracts for the performance of a continuing obligation).
- 3.3. If payment has been agreed in a currency other than euros (EUR), Triple E reserves the right to reduce or increase to the originally agreed euro amount. The invoiced sum is equivalent to the euro value, resulting from conversion of the originally agreed amount at the time the contract was concluded.
- 3.4. The weight of the goods on which the invoiced amount is to be calculated shall be ascertained in the dispatch department of Triple E's plant from which the goods are supplied unless the Buyer wishes them to be weighted, at it's expense, by independent authorities at the place of dispatch.

4. Payment

- 4.1. The handing in of bills of exchange shall be subject to Triple E's prior consent and shall not constitute payment. The maturity of bills shall not exceed 90 days from the invoice date. Discount expenses, bill charges, bill tax and similar expenses incurred after the due date of the invoice shall be for The Buyer's account.
- 4.2. Payment shall not be deemed to have been effected until the amount has been cleared into one of Triple E's accounts.
- 4.3. Triple E reserves the right to use payments for the settlement of the invoices which have been outstanding longest, plus any interest on arrears and costs accrued thereon, in the following order: sequence, interest, principal claim.
- 4.4. The Buyer shall not have the right to withhold payments. Counterclaims may only be offset if they are uncontested or have become res judicata.

5. Delivery

- 5.1. Triple E shall take every effort to deliver as soon as possible. There shall be no fixed periods for delivery.

5.2. Should, notwithstanding the preceding paragraph, a fixed period for delivery have been agreed, and should Triple E default with the supply, the Buyer shall grant Triple E a reasonable respite, normally of four (4) weeks.

5.3. Delivery shall be subject to punctual delivery of the appropriate goods by Triple E's own suppliers.

5.4. Unless otherwise agreed in writing, the terms of delivery shall be Ex Works, as described by the Incoterms 2000. This means that the moment of delivery shall be the moment on which the goods leave Triple E's plant, warehouse or other place, which ever Triple E appoints, and the risk of destruction, loss or damage shall pass to the Buyer upon this moment of delivery.

5.5. If the moment of delivery cannot be ascertained, the moment on which the goods are put at the Buyer's disposal will be the moment of delivery.

5.6. The provision of packaging including tankers and tank containers by Triple E shall be subject to special conditions.

6. **Force Majeure, Impediments to Performance**

Force majeure of any kind, unforeseeable production, traffic or shipping disturbances, fire, floods, unforeseeable shortages of labour, utilities or raw materials and supplies, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment, acceptance or use of the goods, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. Should Triple E's suppliers fail to supply him in whole or in part, Triple E shall not be under obligation to purchase from other sources. In such cases, Triple E shall have the right to distribute the available quantities among his customers while at the same time taking into account his captive requirements.

7. **Shipment by Triple E**

7.1 All transportation, insurance or other costs, regarding shipment of the goods shall be borne by the Buyer.

7.2 If Triple E has decided, on the Buyer's request, to arrange shipment Triple E reserves the right to choose the route and the mode of transport. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by the Buyer. Unless prepaid freight has been agreed, the Buyer shall also bear any increases in freight rates which become effective after the contract has been concluded, any additional costs resulting from re-routing a consignment, storage expenses, etc. This decision of Triple E to arrange shipment will not affect the terms of delivery as described in article 5.4.

8. **Retention of Title**

8.1. Title to the goods shall not pass to the Buyer until he has fulfilled all liabilities arising from his business connection with Triple E, which shall include settling accessory claims and claims for damages and honouring cheques and bills. Title to the goods shall also remain with Triple E if Triple E's claims have been included in a current account and the balance of this account has been struck and acknowledged.

8.2. If The Buyer defaults in his obligations to Triple E, Triple E shall have the right, without granting a respite and without cancelling the contract, to demand the return of the goods to which he retains title. Acceptance of the returned goods shall not constitute cancellation of the contract unless Triple E has expressly declared this in writing. If Triple E cancels the contract, he shall have the right to demand compensation for having.

8.3. The Buyer shall be under obligation to provide, on behalf of Triple E, adequate storage of the goods to which Triple E retains title and to insure them at his expense against loss and damage up to an extent which may reasonably be expected of a prudent businessman.

8.4. By accepting these Conditions The Buyer assigns in advance to Triple E any claims which may accrue to him under the insurance policies.

8.5. The Buyer shall not have the right to pledge, chattel mortgage or otherwise encumber the goods to which Triple E retains title. When reselling the goods, the Buyer shall make the passing of the title subject to full payment of the goods by his customers.

8.6. By accepting these Conditions, The Buyer assigns in advance to Triple E any claims which may arise from a resale of the goods to which Triple E retains title, together with

any incidental rights and security interests including bills of exchange and cheques, so as to provide Triple E with security for all claims he has on the Buyer as result of the business connection. If goods to which Triple E retains title are sold together with other goods at a single price, the assignment shall be limited to the portion of the invoice value which covers the goods to which Triple E retains title.

8.7. If the Buyer uses goods to which Triple E retains title for processing a third party's product on a contract basis, in accepting these Conditions he assigns in advance his contractual claim on the third party to Triple E in order to provide him with security for his claim. As long as the Buyer duly meets his liabilities to Triple E, he may collect claims from a resale or from contract processing himself. He shall not have the right to assign or pledge such claims as security.

8.8. If Triple E believes his claims to be at risk, the Buyer shall, at Triple E's request, inform his customers of the assignment of his claims to Triple E and supply Triple E with all necessary information and documents. Any acts of third parties aimed at seizing goods to which Triple E retains title or at appropriating claims assigned to him shall be brought to Triple E's attention by the Buyer immediately.

9. **Damages**

9.1. No claims for compensation may be lodged by the Buyer - including those of a non-contractual nature - for any minor negligent breach of duty by Triple E, his executive staff or other agents, unless such breach concerns a duty that is crucial for the object of the contract.

9.2. Triple E shall not be liable for indirect damage including but not limited to (a) physical damage or abrasion to the Heat Exchanging System caused by animals, flying or falling objects, or natural disasters including but not limited to earthquakes, hailstorms, windstorms, hurricanes, and tornadoes, (b) vandalism, (c) structural movements, (d) defects in the construction of the heat exchanging machine (e) direct contact with hydrocarbons, or any other chemical (solid, liquid, gas, or any other form) that is not listed or that has not been otherwise approved by Thermoguard in writing, or (f) not regular cleaning by a non-authorized party, without any prior written consent by the Thermoguard Applicator or (h) damages have occurred during transport to the site or installation (i) damage following serious negligence of the owner (j) all follow up damages to company processes or fines or claims of third parties, (k) damages following poor maintenance or non compliance to maintenance guide lines (l) damages to coils or parts which are not clearly defined under this warranty (m) any other damages to company processes, employees or assets.

9.3 Triple E shall not be liable for damage which could not be foreseen during or prior to application or at the time of conclusion of the contract.

9.4. None of the above shall affect any statutory liability rights.

9.5. No claims for compensation for damage to the treated article caused by Triple E, his employees or other agents, may be lodged by the buyer.

10. **Notification of Defects**

10.1. Notification of defects shall only be recognized if filed in writing within two (2) weeks of receipt of the goods, together with supporting evidence, samples and packing slips, stating the invoice number and date, and the markings on the packaging.

10.2. Hidden defects must be notified to Triple E immediately upon discovery, but not later than five (5) months after receipt of the goods. This shall not affect the statutory periods of limitation. The burden of proving that a defect is a hidden defect shall rest with the Buyer.

10.3. Goods forming the subject of a complaint shall not be returned to Triple E except with Triple E's express consent.

11. **Warranty**

If The Buyer has notified Triple E of a defect as stipulated above and his complaint proves justified, Triple E shall have the right to supply him with a replacement. If Triple E waives his right to supply a replacement, or if he does not supply a replacement within a reasonable period, or if the goods supplied in replacement also prove defective, the Buyer shall have the option of requesting a reduction in the purchase price or cancellation of the purchase.

12. **Technical Advice, Use and Processing**
Technical advice provided by Triple E verbally, in writing or by way of trials is given in good faith but without warranty, and this shall also apply where proprietary rights of third parties are involved. Triple E's technical advice shall not release The Buyer from the obligation to test the products supplied by Triple E as to their suitability for the intended processes and uses. The application, use and processing of the products are beyond Triple E's control and therefore entirely The Buyer's responsibility.
13. **Trademarks**
13.1. The Buyer acknowledges the fact that Triple E is the holder of the trademark 'Thermoguard', the Buyer shall not use the trademark 'Thermoguard' for any other reason than to identify the specific products which are delivered by Triple E, unless Triple E has given a written approval.
14. **Applicable Law, Interpretation of Trade Terms, Choice of Law and Jurisdiction**
14.1. Dutch law shall apply. No uniform laws governing the international sale of movable property or the conclusion of international sales contracts for movable property, both dated July 17, 1973, or the UN agreement on the sale of goods dated April 11, 1980, shall apply. Application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods - both dated July 17, 1973 - shall be excluded.
14.2. Customary trade terms shall be interpreted in accordance with the Incoterms (ICC Paris) effective at the time.
14.3. Even if it has been agreed that Triple E pays the customs and import duties in the country of destination, any increases in such duties which become effective between the date of the order acknowledgment and delivery of the goods shall be borne by the Buyer. All other charges, taxes and costs connected with the purchase contract shall also be borne by The Buyer.
14.4. Place of performance for delivery shall be Triple E's plant, warehouse or other place, which ever Triple E appoints. Place of performance for payment shall be Triple E's account in Utrecht.
14.5. Place of jurisdiction for both parties shall be Utrecht.
15. **Invalidity of Individual Clauses**
15.1. The fact that any clause in these General Conditions of Sale and Delivery is or should become invalid shall not affect the validity of the remaining clauses or remaining parts of the clause concerned. The parties shall replace any invalid arrangement by an effective one which conforms as far as possible to the economic purpose of the invalid clause.

June 2001, Utrecht, The Netherlands

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