

# THERMOMETRICS CORPORATION TERMS AND CONDITIONS

\*All quotations, acknowledgements, and invoices by Thermometrics Corporation its subsidiaries or affiliates are subject to these terms and conditions.\*

## **1. Limited Warranties and Disclaimers:**

Thermometrics Corporation warrants products against defects in materials or faulty workmanship for one year from the date of shipment. Products returned (transportation pre paid) within one year from the date of shipment, which Thermometrics determines to be faulty by reason of defective materials or faulty workmanship, will be replaced or repaired at Thermometrics discretion, free of charge. **THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE PURCHASER IN THE EVENT OF A BREACH BY THERMOMETRICS.** Returned items that show evidence of mishandling or misapplication may be returned to Thermometrics at the Purchaser's expense. Thermometrics shall not be liable for damage to or loss of goods furnished by the Purchaser. **THERMOMETRICS IS NOT TO BE HELD LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES CAUSED BY ITS PRODUCTS, INCLUDING, BUT NOT LIMITED TO: DAMAGES FOR LOSS OF USE, INCOME, PROFIT OR GOODWILL; LOSSES SUSTAINED AS A RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSONS; AND/OR DAMAGES TO PROPERTY, OTHER THAN THE PRODUCT. IN NO CASE SHALL THERMOMETRICS LIABILITY EXCEED THE PRICE PAID FOR THE PRODUCT.** When products are supplied, at the Purchaser's request, on a "best effort" basis for use under conditions that exceed design specifications, the products are shipped "as-is", with no warranty, stated or implied. Thermometrics products are not designed, authorized, or warranted to be suitable for use in life-support devices or systems or other critical applications that involve potential risks of death, personal injury, or severe property or environmental damage. Inclusion of Thermometrics products in such applications is understood to be fully at the Purchaser's risk. **THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER EXPRESSED WARRANTY OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF THERMOMETRICS, ITS EMPLOYEES OR AGENTS**

## **2. Design Control**

The Purchaser may request, in writing, that Thermometrics agree to make no design changes without the advance approval of the Purchaser. Otherwise, Thermometrics reserves the right to make changes in the design and manufacture of any item without incurring any obligation to revise items manufactured for, or delivered to, the Purchaser prior to such a change. The Purchaser is responsible for the validation of the product design and to determine that the product is suitable for use in the Purchaser's intended application. The Purchaser is deemed to have accepted and validated the product design upon acceptance of a shipment from Thermometrics. Thermometrics will use the current revision of referenced documents unless Purchaser states a different revision on their purchase order.

## **3. Designs and Specifications**

Thermometrics assumes no responsibility for the adequacy of any designs, specifications, requirements and/or instructions provided by Purchaser. Acceptance by the Purchaser of any custom or non-standard products provided by Thermometrics shall constitute an acknowledgement that the Purchaser has reviewed the designs for such products and is satisfied that the designs meet all specifications, requirements, and standards applicable to such products. Purchaser understands and agrees that **THERMOMETRICS IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTY (INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE) RELATIVE TO THE DESIGN OF SUCH CUSTOM OR NON-STANDARD PRODUCTS.** Purchaser agrees to indemnify and hold Thermometrics harmless against any claims or suits alleging defective design of such products. Purchaser further agrees that, upon request by Thermometrics, it will execute a design approval form confirming the matters contained in this paragraph, and that Thermometrics may withhold shipment of such products pending execution of such form.

## **4. Technical Assistance, Samples, Demonstrations:**

Any technical advice, recommendations, samples, lab test, and/or demonstrations provided by Thermometrics (or its representatives) concerning the use, application or compatibility of any products or materials are provided by Thermometrics solely for the purpose of assisting the Purchaser to evaluate, at its own risk, the suitability of Thermometrics products for the Purchaser's intended use. Thermometrics demonstrations **PROVIDED BY THERMOMETRICS** shall not be construed as an express or implied warranty.

## **5. Changes, Rescheduling, Cancellations:**

Purchaser may request to modify the designs or specifications for the items sold as well as the quantities and dates for delivery or performance, or may request to cancel all or part of the order, but no such modification or cancellation will become effective unless accepted in writing by Thermometrics. Acceptance of any such modification or cancellation will be at Thermometrics discretion and will be upon such terms as Thermometrics may

require which may include changes to price, surcharges and cancellation charges as deemed appropriate by Thermometrics.

## **6. Payment Terms, Prices, Taxes and Duties:**

Except as otherwise agreed upon and set forth on the front of a Thermometrics invoice or acknowledgment, terms of payment are net 30 days from invoice and prices do not include any taxes, freight, handling, duty or other similar charges, payments of which will be the sole responsibility of Purchaser. Prices are conditioned upon timely payment and any past due balance will accrue interest at the monthly rate of one and one-half percent. Freight charges may be constructed on the basis of standard carrier tariffs and may not reflect actual transportation costs. Thermometrics reserves the right to modify terms prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of Purchaser's credit worthiness or should Purchaser fail to fulfill any obligation when due.

## **7. Delivery, Risk of Loss, Delays:**

Unless otherwise stated on the face of the invoice, deliveries of product will be FOB Northridge, including risk of loss passage. Thermometrics may indicate scheduled shipment or service dates for certain items of Purchaser's order. Such dates are estimates only and may be subject to change by Thermometrics without liability.

## **THERMOMETRICS SHALL HAVE NO LIABILITY FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES DUE TO FAILURE FOR ANY REASON TO MEET SCHEDULED SHIPMENT DATES.**

Thermometrics shall not be liable for any damage to or loss of product following delivery to the FOB point, including any damage or loss in transit.

## **8. Inspection, Acceptance, Returns:**

Purchaser will thoroughly inspect each shipment of products promptly upon receipt. All products will be deemed to have been accepted ten (10) days after receipt, except for products for which Purchaser makes a written claim of non-conformance within such time. All products made the subject of such a claim will be deemed to have been accepted ten (10) days after receipt by Purchaser of conforming goods. No products may be returned to Thermometrics except by prior authorization by Thermometrics. All such returns will be subject to Thermometrics then current returned goods policies and procedures.

## **9. Tooling:**

Tools developed by Thermometrics production for a product specific to the Purchaser, which are invoiced to and paid for by the Purchaser, are the property of the Purchaser. Purchaser may request shipment of the tools (at the expense of the Purchaser) at any time. If the Purchaser owned tools are in the possession of Thermometrics and are not used, due to lack of orders from the Purchaser, for a period of more than three (3) years, title to the tools will automatically revert to Thermometrics. Thermometrics reserves the right to dispose of any tools that have not been used due to lack of orders from the Purchaser for a period of more than three (3) years.

## **10. Entire Agreement:**

These Terms and Conditions constitute the entire agreement between the Purchaser and Thermometrics. In the case of conflict, terms and conditions contained herein will supersede and control any contrary terms. Any purchase order, written confirmation, or other reasonable expression of acceptance by Purchaser will form an acceptance, which is expressly limited to the terms and conditions of this quotation, acknowledgment or invoice. Any different, additional, or inconsistent terms or conditions of Purchaser's purchase order or other documents will constitute a material alteration of Thermometrics offer, and unless specifically accepted in writing by an authorized representative of Thermometrics are objected to and will not be binding on or effective against Thermometrics.

## **11. Force Majeure:**

Thermometrics shall not be liable for any failure to perform its obligations where such failure is as a result of Acts of God (including fire and natural disaster), any civil or military action, or any other cause or event not reasonably within Thermometrics control.

## **12. Governing Law:**

This Agreement will be construed and governed by the laws of the State of California.

Accepted this \_\_\_\_\_ date of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_  
(Authorized Customer Representative Signature)

Name: \_\_\_\_\_ (Printed)