

## GENERAL TERMS AND CONDITIONS

applicable to the sale and supply of Products by Thermaflex Isolatie BV

These General Terms and Conditions have been deposited with the Public Register at the Chamber of Commerce Midden-Brabant at Tilburg, The Netherlands, under file number 18116061.

### Article 1 General

- 1.1 In these General Terms and Conditions the following definitions shall be applicable; definitions shall always be indicated with a capital letter:  
- "Thermaflex" shall mean Thermaflex Isolatie B.V., registered address Veerweg 1, NL-5145 NS Waalwijk, The Netherlands, and any existing or future branch of Thermaflex's main office of which the business data and terms and conditions are administered under the abovementioned file number  
- "Customer" shall mean the contract party of Thermaflex or, as the case may be, the addressee of the offer of Thermaflex  
- "Products" shall mean all products and side-products, produced, offered and sold by Thermaflex, including any combinations of products such as tubes, insulation and fittings which are supplied by Thermaflex as one integrated product
- 1.2 These General Terms and Conditions are applicable to all offers and agreements by Thermaflex, unless deviated there from in writing. Customer accepts the applicability of these General Terms and Conditions by simple means of his order, regardless whether Customer's own conditions would read differently. Any applicability of Customer's purchasing or other terms and conditions is expressly rejected.
- 1.3 Deviations from these General Terms and Conditions are only valid if expressly confirmed by Thermaflex in writing.
- 1.4 Specific conditions in agreements in which these General Terms and Conditions have been declared applicable, prevail over these General Terms and Conditions.

### Article 2 Offers, entering into force of the agreement, supplied data, deviations

- 2.1 All offers are without engagement and are valid for maximum 4 (four) weeks from the date of issue, unless indicated otherwise. The agreement enters into force by means of dispatching the order confirmation by Thermaflex. If for whatever reason the order confirmation is not dispatched, the entering into force of the Agreement is confirmed through the execution of it by Thermaflex. The date of dispatch of the abovementioned order confirmation or, as the case may be, the date on which Thermaflex starts executing the agreement, shall be the date the agreement enters into force.
- 2.2 All data concerning the Products such as composition, color, weight and the like, which are not laid down in written specifications by Thermaflex, are merely indicative and therefore not binding for Thermaflex. The same applies to shown or supplied samples.
- 2.3 If and to the extent specifications for the Products have been given by Thermaflex, delivery shall take place according to these specifications. In all other situations, deviations from supplied or shown models and samples shall not give rise to claims, replacement, damage compensation or any other right.

### Article 3 Delivery terms, prices, price adjustments

- 3.1 Unless expressly agreed otherwise, all prices are based on delivery "EXW", ex works or warehouse, according to the definition of the Incoterms of the International Chamber of Commerce - ICC -, valid on delivery date. If and to the extent Customer is requesting Thermaflex to arrange for transportation of the Products, for instance in case of emergency deliveries, all corresponding costs will be charged to Customer separately.
- 3.2 All prices given by Thermaflex are exclusive of turnover tax (VAT) and any other governmental levies on the sale and supply of the Products. Prices are inclusive of customary packaging material. If at Customer's request, specific packaging material is applied, all corresponding extra costs will be charged to Customer separately.
- 3.3 If after entering into force of the agreement, one or more pricing factors undergo an increase, even if such is a result of foreseeable circumstances, Thermaflex shall be entitled to adjust prices accordingly, taking into account any possibly applicable laws or governmental regulations.

### Article 4 Delivery, delivery time, partial delivery

- 4.1 Products are delivered in adequate packaging, taking into account the way of transportation to the place of destination. The Products are deemed to be delivered at the date they are put at Customer's disposal at Thermaflex' works or warehouse.
- 4.2 Delivery times commence at the date of entering into force of the agreement or at the moment Thermaflex has complied with all formalities, necessary for the proper execution of the agreement. Thermaflex will do its utmost to comply with specified delivery dates, but such dates shall not be binding for Thermaflex. Not meeting the delivery dates shall not entitle Customer to terminate the agreement in whole or in part or to damage compensation, unless in case of gross negligence or wilful intent on the part of Thermaflex.
- 4.3 Thermaflex shall be entitled to deliver in parts. In case of partial delivery Customer shall pay the related invoice as if it were an individual transaction.

### Article 5 Retention of title

- 5.1 Notwithstanding the passing of risk with respect to the Products according to the delivery condition EXW as mentioned in article 3.1, Thermaflex reserves title in all Products delivered to Customer for the time Customer has not, or not yet fully paid any amount due to Thermaflex regarding:  
- a counter obligation by Customer resulting from the agreement or a similar agreement or regarding work performed by Thermaflex for Customer according to a comparable agreement  
- a breach of contract by Customer in the prevailing or a similar agreement.
- 5.2 As long as title in the Products has not passed to Customer, Customer shall, other than in the normal course of its business and without written permission of Thermaflex, not be entitled to alienate, encumber, pledge or in any other way bring the Products within the power of third parties.

### Article 6 Payment, credit collection

- 6.1 Unless expressly agreed otherwise, all payments shall be made without any deduction, discount or settlement, within 30 (thirty) days from the date of invoice to a bank account, specified by Thermaflex.
- 6.2 Customer payments shall first be used for the settlement of any interest and costs due and secondly for the settlement of invoices which are the longest due, even if Customer declares that payment is related to a later invoice.
- 6.3 In case of late payment, a late payment interest shall be incurred, as of the date of late payment and without notice of default, in the amount of 1% (one percent) per month or part thereof, as well as all judicial and extra judicial costs relating to the debt collection, which costs are set at 15% (fifteen percent) of the collectable amount with a minimum of € 250 (two hundred and fifty Euro).
- 6.4 Before and during the execution of the agreement, Thermaflex shall, if on good grounds it is fearing that Customer will not or not timely be able to fulfil its payment obligations towards Thermaflex, be entitled to stipulate additional payment conditions or to postpone the fulfilment of its obligations.

### Article 7 Entrance inspection, claims, individual Products

- 7.1 At delivery of the Products, Customer shall perform an entrance inspection. If a difference in quantity between the ordered and delivered Products or any damage is established, Customer shall make pertaining reservations with the forwarder, in absence of which any claim against Thermaflex shall be null and void, and Customer shall inform Thermaflex immediately of the results.
- 7.2 Claims concerning directly visible defects in the Products as well as claims which can be established through superficial examination or simple checking, must be reported to Thermaflex within 8 (eight) working days, in absence of which Customer shall be deemed to have accepted the concerned Products. In such case, Thermaflex shall not be liable for any claim in this respect.
- 7.3 Claims concerning defects which can only be established through in-depth investigation, testing and the like, must be filed in writing with Thermaflex immediately after establishment, but at any rate within the warranty period as specified in article 7.6, in absence of which Thermaflex shall not be liable for any claim in this respect.
- 7.4 Claims concerning minor deviations in size, weight, colour, clearness and quality of the Products, which are deemed acceptable in the branch or cannot be avoided from a technical point of view, will not be accepted.
- 7.5 Customer shall at all times keep at least 90% (ninety percent) of the Products concerning which a claim has been filed, available for inspection. In case of claims, processing or further delivery of the concerned Products shall only take place after prior written approval by Thermaflex.
- 7.6 During a period of 10 (ten) years from the date of delivery as mentioned in article 4.1, Thermaflex warrants the quality of the Products in the sense that they have been manufactured with the required craftsmanship and that during manufacture the correct or prescribed raw materials have been used. If and to the extent Thermaflex has applied products or semi-products from suppliers, the warranty with respect to such products shall be equal to the warranty such suppliers will offer to Thermaflex, taking into account that the warranty period shall under no circumstances be longer than the abovementioned 10 (ten) years.
- 7.7 If a warranty claims appears to be valid, Thermaflex shall, at its own discretion, (i) take the concerned Products back and replace same with Products of good quality at its charge, or (ii) credit Customer the invoice value of the concerned Products. Returning the Products can only take place after prior written authorization from Thermaflex. Product returns shall be made in packaging which adequately protects the Products against transport damage.
- 7.8 Establishing a defect in part of the delivered Products does not entitle Customer to refuse all delivered Products. Payment obligations of Customer are not postponed by claims of whatever nature.
- 7.9 Any warranty becomes null and void in case, at the judgment of Thermaflex, the defect results from: (i) misuse or (ii) any use contrary to the purpose of the Product;
- 7.10 Except for the stipulations, comprised under article 8.2, the provisions of this article contain the total and exclusive liability of Thermaflex concerning claims or defects with respect to Products supplied by Thermaflex.

### Artikel 8 Information and processing instructions with respect to combinations of Products

- 8.1 Regarding various Products, Thermaflex has issued, or will issue at a later point in time, further data in writing. Such data concern information and instructions concerning:  
- transportation and storage,  
- processing and/or assembling,  
- mounting and use of these Products, as well as  
- certification or qualification of personnel which has to process or assemble these Products.
- 8.2 Provided the information and processing instructions mentioned in article 8.1 are strictly complied with and there are no external causes such as subsidence or shifting of soil, tension and/or rupture in buildings and the like, Thermaflex warrants the tightness of combinations of Products which are supplied as an integral part for a period of 10 (ten) years from the date of delivery as mentioned in article 4.1.

### Artikel 9 Liability, hold harmless

- 9.1 Without prejudice to Thermaflex's liability under any applicable legal provision, Thermaflex's liability shall be expressly limited to the fulfillment of its warranty obligations or the warranty obligations which suppliers have towards Thermaflex. Each and every liability arising out of- or related to any from of direct-, indirect- or consequential damage is expressly excluded.
- 9.2 If and to the extent consulting activities are requested from Thermaflex with respect to the Products to be supplied, such consulting activities shall be limited either to non-binding information or to the written specifications of the Products as laid down by Thermaflex. The correctness and completeness of all information, supplied by Thermaflex, must be checked and recalculated by Customer, or consultants operating on Customer's behalf, within the framework of the concrete situation within which consultancy has been requested. Thermaflex expressly disclaims any liability for consulting activities, regardless whether such liability is based on the law or any contractual obligation.
- 9.3 If and to the extent Thermaflex is held liable by a competent judge, notwithstanding the provisions of the preceding paragraph, Thermaflex's liability, however based, shall under all circumstances be limited to € 500,000 (fivehundredthousand Euro) per event or series of related events.
- 9.4 Customer shall hold Thermaflex harmless from any and all claims of third parties with respect to damages for which Thermaflex is not liable according to the provisions of these General Terms and Conditions.

### Artikel 10 Applicable laws and regulations

- 10.1 It is expressly stated that Products, made of- or based on polybutene granulate, need project approval before for delivery to- or use in the U.S.- or Canadian-market. In view of this, the export, transit as well as export via third parties (indirect export) of the aforementioned Products to the U.S. and/or Canada is strictly subject to project approval.
- 10.2 Customer shall be responsible that the Products comply with the laws and regulations and standards, applicable in the country in which the Products are delivered, processed and/or assembled.

### Artikel 11 General

- 11.1 Thermaflex shall be entitled to invoke force majeure which is understood to mean any circumstances which interfere with the execution of the agreement and which are not attributable to Thermaflex. Force majeure includes but shall not be limited to: strikes, occupations, a shortage of material, equipment or services, required for the fulfillment of the contractual obligation, unforeseeable stagnations at suppliers or other third parties on whom Thermaflex depends and all other matters and facts which are beyond Thermaflex's control.
- 11.2 Dutch Law is applicable to all legal relationships to which these General Terms and Conditions apply and to all agreements resulting there from. To the extent not expressly deviated there from in these General Terms and Conditions, the provisions of the Vienna Treaty of April 11, 1980 (Convention on the International Sale of Goods) shall also be applicable.
- 11.3 All disputes between Thermaflex and Customer -including those which are only considered as such by one of the parties- shall be judged by the competent Court at Breda, The Netherlands.
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