



# International Terms and Conditions of Sale

**GENERAL:** The following terms and conditions apply to all sales from Thermadyne brands and business units (collectively, "Thermadyne") unless specifically noted. No provision, printed or otherwise, contained in any order, acceptance, confirmation or acknowledgment that is inconsistent with, different from or in addition to these Terms and Conditions of Sale (these "Terms") is accepted by Thermadyne unless specifically agreed to in writing by Thermadyne. No changes to any of these Terms, to the scope of an order or to the price of any Thermadyne products or goods ("Goods") shall be binding on Thermadyne until accepted in writing by Thermadyne. All inquiries should be directed to Customer Care.

**PRICING & POLICIES:** Thermadyne is committed to providing purchaser's of our Goods (individually a "Buyer" and collectively "Buyers") with advanced notice of price changes whenever possible. Thermadyne reserves the right, however, to change prices and sales policies without notice. Proforma quotations will be valid for 60 days from issuance unless otherwise amended. Orders with specified shipping dates (deferred orders) will be invoiced at time of shipment. Thermadyne reserves the right to sell to any other party. **STOODY® ONLY:** For products manufactured to customer specifications, Stoodly may deliver up to 10% above or below the purchase quantity to complete the order.

**PROFORMA:** A Proforma quotation will be furnished upon request to Thermadyne Customer Service.

**PAYMENT TERMS:** It is the policy of Thermadyne to require Letters of Credit (L/C) or cash for all shipments, which are exported. Alternative payment terms may be arranged upon submission of appropriate credit application and financial information. Letters of Credit are to be established under the Terms and Conditions established by Thermadyne. Contact Thermadyne Customer Service for further details. It is requested that the L/C be stated so as to allow ten percent (10%) above the L/C amount for variations. This will avoid unnecessary amendments to the L/C. Buyer's failure to make payment when due shall be considered a material breach of the order and these Terms and Conditions. Penalties for delinquent accounts, may include, but not be limited to, loss of open account status, shipments being made only on a C.O.D. basis, or discontinuation of supply. Buyer further agrees that Thermadyne, at its sole option and without incurring any liability, may also suspend its performance until such time as the overdue payment is made or Thermadyne receives assurances, adequate in Thermadyne's opinion, to indicate that payment shall be promptly made. In the event of such suspension, the delivery schedule and order price shall be equitably extended and increased taking into account the delay and costs resulting from such suspension. Buyer shall promptly pay Thermadyne for all costs and related overhead costs arising from such suspensions. Buyer shall further be responsible for all expenses relating to any efforts made by Thermadyne to collect payment, including but not limited to Thermadyne's attorneys' fees, regardless of whether litigation is commenced. Payments due hereunder shall in no event be subject to set-off for any reason, including, but not limited to, any warranty claims or any claims that concern another order or business arrangement between the parties. Waivers of lien by Thermadyne shall be contingent upon Thermadyne being in receipt of all payments as and when they become due.

**OBLIGATIONS OF BUYER:** Buyer is solely responsible for identifying and defining all processes and mechanical considerations that may affect the performance, reliability, or operation of the Goods furnished by Thermadyne. Thermadyne's quotation and any sale is based upon the covenant by Buyer that all the information and data provided to Thermadyne by or for Buyer is complete, accurate and does not contain information that is misleading.

**MINIMUM ORDER:** The minimum billing for each Thermadyne order is \$500 U.S. (after discounts). Repair parts are exempt from minimum billing requirements.

**TECHNICAL ASSISTANCE:** It is expressly understood that any services or technical assistance furnished by Thermadyne will be addressed in a separate written agreement between the parties. In no event will any such services or technical assistance provided by Thermadyne constitute a waiver by Thermadyne of any of these terms and conditions or affect or expand Thermadyne's obligations under these terms and conditions, the order or any contractual arrangement.

**COLLECT SHIPMENTS:** Unless otherwise agreed, for collect shipments, Buyer is responsible for arranging and paying for all shipping, freight, forwarding, handling and insurance costs.

**INLAND FREIGHT ALLOWANCE:** U.S. Inland freight charges will be prepaid on ocean/air/truck orders with a net billing value of over \$750.00 U.S. For orders under \$750.00 U.S., a freight charge added to the invoice. Courier orders are shipped ex works with all freight charges to the Buyer's account or DDU prepaid and charged by Thermadyne. Order minimums must be at a net billing value of \$750.00 U.S. All shipments are FCA freight forwarders USA warehouse, unless otherwise stated. Thermadyne reserves the right to select the lowest cost method of inland transportation. If the Buyer desires an alternative method of transportation or routing, Thermadyne will ship as requested and add the cost to the invoice. Thermadyne reserves the right to select international carriers and/or forwarders if the Buyer's requested method will delay shipments.

**CLAIMS:** Claims of short shipments must be received by Thermadyne within 30 days following the receipt of goods.

**LIMITED WARRANTY:** All Thermadyne products are covered by a limited warranty as detailed in the applicable pricing and product literatures. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED HEREIN; THERMADYNE EXTENDS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. NO WARRANTY, EITHER EXPRESS OR IMPLIED, IS GIVEN AS TO THE CAPACITY, EFFICIENCY OR PERFORMANCE OF THE GOODS, EXCEPT AS MAY BE EXPRESSLY AGREED TO BY THE PARTIES IN WRITING. The parties agree and acknowledge that to the extent the goods are covered by a limited warranty as provided in the pricing and product literatures, said warranty will be null and void if: (a) the goods were not stored, installed, maintained or operated in accordance with best accepted U.S. industry practice and any specific instructions provided by Thermadyne; (b) the goods were subject to any accident, misapplication, environmental contaminant, corrosion, abrasion, abuse or misuse; (c) Buyer used, repaired, or modified the goods after discovery of the defect without Thermadyne's prior written consent to continue to use; or (d) Buyer fails to permit Thermadyne to examine the Goods and operating data or fails to furnish routine operating data sufficient to determine the nature of the defect claimed.

Thermadyne® International Customer Service Tel. 905.827.9777





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**RETURNED PRODUCT PROCEDURE:** PRIOR to returning any product, the Buyer must contact Thermadyne Customer Service to request a Returned Goods Authorization (RGA) and provide a written list of the products to be returned. Thermadyne will review the list of items for eligibility and issue a Returned Goods Authorization (RGA) number, which should be noted on all returned goods and replacement order documentation. All returned products must be shipped directly to the original factory. Upon receipt of the products, the appropriate division will inspect the items and issue credit less restocking and any other applicable charges. A replacement order must be received before credit can be issued. Product received without an RGA number will be returned, freight collect, to the Buyer. If the product does not meet applicable specifications, Thermadyne will pay the freight. All other instances will be the responsibility of the Buyer.

**WARRANTY RETURN:** Contact Customer Care for assistance.

**LIMITATION OF LIABILITY:** THERMADYNE'S LIABILITY IS LIMITED TO THE PRICE ALLOCABLE TO THE GOODS DETERMINED DEFECTIVE AND IN NO EVENT WILL THERMADYNE'S CUMULATIVE LIABILITY BE IN EXCESS OF THE TOTAL ORDER PRICE, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. THIS LIMITATION SHALL BE INCLUSIVE OF ALL INSURANCE, BOND AND LETTER OF CREDIT PROCEEDS, WHICH MAY BE PAID TO BUYER BY THE INSURERS, SURETIES OR BANKS OF THERMADYNE. THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS STATED ELSEWHERE. THERMADYNE WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFIT OR BUSINESS INTERRUPTION, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BUYER'S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE GOODS AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE TOTAL ORDER PRICE TO IT BY THERMADYNE SHALL PREVENT THE REMEDIES FROM FAILING THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.

**PROPRIETARY INFORMATION:** Buyer agrees that any data, such as Thermadyne's specifications, drawings, and information (including, without limitation, designs, reports, documentation, manuals, models, process information, and the like), revealed by Thermadyne to Buyer and containing proprietary information marked or identified as proprietary, shall be kept in confidence by Buyer with at least the same care and safeguard as are applied to Buyer's own proprietary information. Such data shall not be duplicated, disclosed to others, or used without the written permission of Thermadyne. These obligations shall not apply to any information which is in or comes into the public domain without violation of this agreement; or is received lawfully by Buyer from a third party subsequent to this agreement; or is developed by Buyer independently and without benefit of information received from Thermadyne.

**PATENT INDEMNITY:** In lieu of any other warranty by Buyer or Thermadyne against patent infringement, statutory or otherwise, it is agreed that Thermadyne shall defend at its expense any suit against Buyer or its customers based on an allegation that the per se furnished by Thermadyne infringe any United States Letters Patent, and shall pay damages finally awarded in any such suit, provided that Thermadyne is notified in writing of the suit and given authority, information and assistance at Thermadyne's expense for the defense or settlement of same. If the use of said products is enjoined in such a suit, Thermadyne at its sole election, procure either for the Buyer or its customers the right to use said products; or substitute an equivalent product acceptable to Buyer and extend indemnity thereto; or modify same to render them non-fringing; or refund the purchase price to Buyer.

**EXPORT SALES:** Buyer has complied and/or will comply with applicable laws, rules and regulations of the United States of America and of any other country concerned pertaining to the purchase and movement of, and the payment for, the products to be delivered hereunder. All drawbacks of the duties paid on items entering into the manufacture of the products delivered hereunder shall accrue to Thermadyne, and the Buyer agrees to furnish Thermadyne with all documents necessary to obtain payment of such drawbacks and to cooperate with Thermadyne in obtaining such payment.

**STOODY ONLY:**

**TEST CHARGES:** Additional charges are necessary on military, nuclear or special certification requirements. Check with Stooddy Company's Customer Service Department for details.

**CERTIFICATION:** AWS and MIL certification requests must be made at time order is placed. AWS and MIL compliance cannot be certified after shipment.

**MISCELLANEOUS.** Buyer shall not assign its obligations hereunder without the prior written consent of Thermadyne. These Terms shall be binding upon and inure to the benefit of the parties hereto, who shall be deemed independent contractors, and to their successors and assigns. These Terms are severable and the invalidity or unenforceability, in whole or in part, of any provision shall not impair or affect the remainder of that provision or other provisions. The paragraph headings herein are for convenience only and shall not be deemed to affect in any way the language of the provision to which they refer. These Terms shall be construed and the legal relations of the parties shall be deemed in accordance with the laws of the State of Missouri, and the parties consent and will submit to the state jurisdictions of St. Louis County, Missouri, and federal jurisdiction of the Eastern District of Missouri.

As of September 3, 2008

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