



# 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 Buyers (as hereafter defined) with advanced notice of price changes whenever possible. Thermadyne reserves the right, however, to change prices and sales policies without notice. Thermadyne further reserves the right to quote and sell direct to Government agencies, private brand customers and to OEM accounts that use Thermadyne products as integral parts of their own products. All orders will be billed at the prices in effect at the time the order is received; surcharges, if applicable, will be applied at the time the order is received. Orders with specified shipping dates (deferred orders) will be invoiced at time of shipment. Unless otherwise stated in writing by Thermadyne, the price offered by Thermadyne does not include any cost of transportation, handling, containerization, crating, packing, duties, tariffs or any taxes. To the extent allowed by applicable law, the purchaser of the Goods (individually a "Buyer" and collectively "Buyers") shall be responsible for all taxes and the filing and payment thereof, including, but not limited to, transfer, VAT, provincial, sales, use and excise taxes, and shall indemnify and hold harmless Thermadyne against any liability arising therefrom. **STOODY BRAND ONLY:** For products manufactured to customer specifications, Stooddy may deliver up to 10% above or below the purchase quantity to complete the order.

**TRADE AND PAYMENT TERMS:** Thermadyne shall receive payment within 30 days after the invoice date, unless otherwise specified on the invoice. 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 loss of Buyership. To the extent permitted by applicable laws, Buyer agrees to pay on demand, as a late charge, an amount equal to 1-1/2% per month of each payment that remains overdue, or the maximum rate allowed by applicable law. 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. At the request of Thermadyne, Buyer shall execute all documents required to have Thermadyne retain a first priority security interest in the Goods until such time as Thermadyne is in receipt of all payments owed.

**STOODY BRAND ONLY - TEST CHARGES:** Additional charges are necessary on military, nuclear or special certification requirements. Please contact Customer Care regarding said charges.

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

**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 individual Thermadyne order is \$100 (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.

**CANCELLATION FEE:** Unless otherwise agreed in writing by the parties, Buyer's may not cancel or terminate the order, except upon written notice and payment to Thermadyne of an amount consisting of all costs incurred by Thermadyne up to the time of cancellation or termination, along with those costs that arose out of or resulted from the cancellation or termination, plus a cancellation fee of 25% of the total order price. Materials received, work in progress, Goods manufactured, and results and products of the work performed, in part of whole, prior to the time of cancellation, shall be retained by and shall be the property of Thermadyne.

**SPECIAL EDUCATION ALLOWANCE:** Thermadyne divisions extend a special educational discount to encourage the sale of products to bona fide educational and vocational institutions for training purposes. An additional 10% discount off Buyer net price will be allowed on Buyer orders for complete products (finished Goods, complete systems, etc.) for the initial sale and shipment direct to educational, vocational or technical institutions. The educational allowance does not apply to machine components or subsequent orders for parts or components. A copy of the educational facility purchase order to Buyer must accompany the Buyer's order when applying for the special discount.

**FREIGHT/SHIPPING POLICY:** Thermadyne will pay standard ground freight shipping costs for all orders over \$750 net that are shipped to a single Buyer location within the continental U.S., FOB destination, regardless of whether the order is shipped in full or partial shipments. All other orders, including drop shipments, are shipped at Buyer's expense, FOB origin, and will be subject to a handling fee of 30% on the freight cost. The parties agree and acknowledge that title and risk of loss will rest with Buyer after the Goods are delivered to the FOB location. If Buyer has not issued shipping instructions by the time the Goods are ready for shipment, Thermadyne may select any reasonable method of shipment, without liability by reason of selection.

**STOODY ONLY:** Stooddy will pay standard ground freight shipping costs on orders of 500 pounds of general hard facing products, \$1,000 of cobalt (Stoodite) products and flux orders in pallet quantities to one destination within the continental United States. When it is necessary to make a partial shipment of an original order complying with the above requirements, Stooddy will absorb freight charges on all subsequent shipments applying to that order. Stooddy reserves the right to route the freight by the most expeditious and economical mode of transportation. If Buyer desires other than the lowest cost method of transportation or routing, Stooddy will ship as requested and add to the invoice any additional charges incurred over the lowest cost method.

**THERMAL DYNAMICS ONLY:** Buyer pays shipping costs of all Thermal Dynamics torch coolant, Super Coolant, and Coolant Concentrate.

**CLAIMS:** Claims of short shipments must be received in writing by the applicable Thermadyne division within 30 days of the date of shipment.

**CRITICAL PARTS/"TODAY SURE" SHIPMENTS:** Thermadyne agrees to use its best efforts to accommodate any special shipping request provided said request is received prior to 2:00 PM central time. Costs incurred for special shipping will be the responsibility of the Buyer.

Please visit our web site at [WWW.THERMADYNE.COM](http://WWW.THERMADYNE.COM) or our email address at [MARCOM@THERMADYNE.COM](mailto:MARCOM@THERMADYNE.COM) for more information.

U.S. Customer Care: Denton, TX - (800) 426-1888 Fax: (800) 535-0557





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**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.

**WARRANTY RETURN:** A Returned Goods Authorization (RGA) number must be obtained prior to returning merchandise for a warranty claim. 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.

**INVENTORY ADJUSTMENT:** Buyer may return for credit items equal to a maximum of 2% of the previous year's NET purchases. The return can be made in a total of two (2) shipments per year. Only items purchased within the past twelve (12) months may be returned. Credit will be issued on returned Goods based on purchase price or current price, whichever is lower. Returned items must be new, in current packaging, and in saleable condition. Service parts and fittings, custom, private brand/label, and products identified as non-returnable at time of order are not eligible for return. Buyer is responsible for freight charges on returned merchandise. Returned merchandise is subject to a 20% restocking charge (10% for Stoddy non-ferrous, tungsten carbide, and small diameter wire) and must be accompanied by an equivalent replacement order with a NET value equal to or greater than the returned merchandise credit requested. Additional charges may be assessed if refurbishment or repackaging is necessary. Thermadyne reserves the right to alter the Inventory Adjustment policy set forth above at its discretion.

**RETURNED MERCHANDISE PROCEDURE:** Buyer must contact Customer Care to request a Returned Goods Authorization (RGA). Buyer must also provide a written list of the products to be returned prior to returning any products. Thermadyne will review the list of items for eligibility and issue a RGA number which should be noted on all returned Goods shipping and replacement order documentation. Upon receipt of the merchandise, Thermadyne 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. Material received without a RGA number will be returned, freight collect, to Buyer. If the product does not meet applicable specifications, Thermadyne will pay the freight. All other instances will be the responsibility of the Buyer.

**PATENTS:** Thermadyne will, at its expense, defend and indemnify Buyer from any suit or proceeding brought against Buyer based on a claim that Goods manufactured and furnished by Thermadyne constitute an infringement of any United States patent, if Thermadyne is notified promptly in writing and given authority, information and assistance for the defense of the suit or proceeding. Defense and settlement of any claim will be within Thermadyne's sole discretion. Should it be held that the Goods constitute infringement and the use of the Goods is enjoined, Thermadyne will, at its own expense and discretion, either procure for Buyer the right to continue using the Goods, replace the Goods with non-infringing Goods, modify the Goods to become non-infringing, or remove the infringing Goods and refund the price paid for the respective Goods. Buyer will indemnify Thermadyne from any suit or proceeding brought against Thermadyne by any third party with respect to any Goods designed and manufactured in accordance with designs, furnished by Buyer.

**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 (a) which is in or comes into the public domain without violation of these Terms; (b) is received lawfully by Buyer from a third party subsequent to this agreement; or (c) is developed by Buyer independently and without benefit of information received from Thermadyne.

**FORCE MAJEURE.** Any failure of performance by either party shall not constitute a default or give rise to any claim for damages or otherwise if, and to the extent cause by, an event of Force Majeure, which shall include, but not be limited to, acts of God, war, earthquake, floods, government acts or any other events or conditions beyond the control of the affected party.

**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

Please visit our web site at [WWW.THERMADYNE.COM](http://WWW.THERMADYNE.COM) or our email address at [MARCOM@THERMADYNE.COM](mailto:MARCOM@THERMADYNE.COM) for more information.

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