

# THERMAXX

## TERMS AND CONDITIONS

### 1. ACCEPTANCE.

The Quote and these Terms and Conditions shall constitute the entire agreement and understanding of Specialty Distribution Group, LLC, a Virginia limited liability company d/b/a/ Thermaxx Jackets and Customer with respect to the purchase and sale of materials and performance of any work. If Customer's order contains provisions inconsistent with the provisions hereof, these terms and conditions shall prevail. These terms are applicable to items purchased via website, purchase order, contract, or any other method. Customer's acceptance of delivery of or payment for any materials provided hereunder shall constitute Customer's acceptance of all terms and conditions herein.

### 2. TERMS OF PAYMENT.

Customer shall pay all amounts due for materials purchased and work performed hereunder in within thirty (30) days from the date of invoice. If Thermaxx deems Customer's financial status unsatisfactory or Customer is in default of any obligation (without prejudice to any other rights or remedies it may have), Thermaxx may require payment in full prior to shipment of any materials. Customer agrees that any amounts overdue shall be subject to a finance charge of 1.25% per month. Customer agrees to be responsible for all costs to collect unpaid amounts, including attorneys' fees, court costs, and any other expenses incurred by Thermaxx to collect such amounts. Thermaxx may stop or withhold any and all deliveries as a result of non-payment by Customer.

### 3. DELIVERY.

Thermaxx shall make every reasonable effort to deliver materials at the scheduled date and time. Customer expressly agrees that Thermaxx is not be responsible for any damages resulting from delivery of materials later than the scheduled date and time.

### 4. INSPECTION BY CUSTOMER.

Customer shall carefully inspect all deliveries of materials as they are received by Customer and report to Thermaxx immediately any alleged error, shortage, defect or nonconformity of such materials. Any failure by Customer to inspect and report within five (5) business days of the delivery of materials shall constitute a waiver by Customer of any claim or right of Customer against Thermaxx arising with respect to any such error, shortage, defect or nonconformity which was reasonably discoverable by such an inspection.

### 5. CANCELLATION.

Cancellation by Customer of any material order cannot be effected except on terms which indemnify Thermaxx from any and all loss, damage or expense caused by said cancellation.

### 6. LIMITED WARRANTY.

All ThermaXX LLC Insulation Jackets are warranted to be free of defects in materials and workmanship for 5 years from the date of original purchase. Jackets found to be defective will be repaired or replaced with the same style or an equivalent

ThermaXX LLC Jacket at ThermaXX LLC's sole discretion. Even though the applicable warranty period may not have expired, certain conditions may invalidate ThermaXX LLC warranty coverage. By way of example, but not all inclusive, ThermaXX LLC will not issue credit for returned product that have experienced: Excessive damage/scuffing to jacket - Damaged straps as a result of cutting or tearing – Jacket was used for a component that temperatures of which the jacket was not specified for (see max temperature on original proposal). **ThermaXX LLC Returns:** Attn: ThermaXX LLC Return Goods via CEO 14 Farwell St., Bldg. 2B, West Haven CT 06516. Warranty claims presented without the original packing list will be honored at ThermaXX LLC's sole discretion.

Notwithstanding, it is the sole and exclusive responsibility of Customer to determine the suitability of any and all materials for Customer's intended purposes and uses. Thermaxx warrants that the materials sold hereunder conform to Thermaxx's listed specifications for such products (subject to industry standard tolerances for variations) as in effect at the time of shipment. Thermaxx shall not have any liability whatsoever for any damage to or defect in materials resulting directly or indirectly from events occurring after the delivery of such materials.

THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY THERMAXX WITH RESPECT TO MATERIALS SOLD. THERMAXX GIVES AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OTHER THAN THAT EXPRESSLY SET FORTH HEREIN. NO REPRESENTATIVE OF THERMAXX IS AUTHORIZED TO GIVE OR MAKE ANY OTHER REPRESENTATION OR WARRANTY OR MODIFY THIS WARRANTY IN ANY WAY EXCEPT IN A WRITTEN AMENDMENT BY A DULY AUTHORIZED REPRESENTATIVE OF THERMAXX WHICH MAKES SPECIFIC REFERENCE TO THESE TERMS AND CONDITIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO IMPLIED WARRANTY OF MERCHANTABILITY, NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, NO IMPLIED WARRANTY OF TITLE OR NONINFRINGEMENT AND NO IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE IS GIVEN OR MADE BY THERMAXX OR SHALL ARISE BY OR IN CONNECTION WITH ANY SALE OF MATERIALS BY THERMAXX, OR CUSTOMER'S USE OF ANY MATERIALS, OR THERMAXX'S AND/OR CUSTOMER'S CONDUCT IN RELATION THERETO OR TO EACH OTHER, AND IN NO EVENT SHALL THERMAXX HAVE ANY LIABILITY OR OBLIGATION WHATSOEVER UNDER OR IN CONNECTION WITH ANY SUCH WARRANTY WITH RESPECT TO ANY MATERIALS.

### 7. LIMITATION OF LIABILITY.

Customer acknowledges that no guarantees or assurances have been made as to the results that may be obtained from the use of the materials sold hereunder. Customer acknowledges that it does not rely on, and waives any claim

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relating to, any recommendation given to Customer by Thermaxx or any of its representatives regarding the specifications, storage, handling or use of materials purchased and sold hereunder, which recommendation or instruction shall be followed or acted upon by Customer entirely at Customer's own risk.

THERMAXX'S LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, IN CONNECTION WITH THE SALE OR USE OF MATERIALS SOLD HEREUNDER (WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY OR OTHERWISE), SHALL BE STRICTLY LIMITED TO THERMAXX'S OBLIGATIONS AS SPECIFICALLY AND EXPRESSLY PROVIDED IN THE LIMITED WARRANTY SET FORTH IN SECTION 6. EXCEPT AS SPECIFICALLY PROVIDED IN SUCH LIMITED WARRANTY, THERMAXX SHALL HAVE NO LIABILITY, OBLIGATION OR RESPONSIBILITY OF ANY KIND, IN ANY WAY OR TO ANY EXTENT FOR ANY LOSSES, EXPENSES, COSTS, DAMAGES OR LIABILITIES FOR ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE PRODUCTS (OR THE PERFORMANCE THEREOF), OR ARISING IN ANY WAY OR IN CONNECTION WITH THE PURCHASE BY OR USE OR SALE OF THE MATERIALS BY CUSTOMER.

IN NO EVENT WHATSOEVER SHALL THERMAXX HAVE ANY LIABILITY, OBLIGATION OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING IN ANY WAY IN CONNECTION WITH THE MATERIALS OR THEIR SALE OR USE, INCLUDING BUT NOT LIMITED TO DAMAGE TO PROPERTY, INJURY TO PERSONS, LOSS OF USE OF THE MATERIALS OR ANY ITEM WITH WHICH SUCH MATERIALS ARE USED, LOST PROFITS, OR DELAYS OR INCONVENIENCE.

ANY LIABILITY WHATSOEVER SHALL BE STRICTLY LIMITED TO THE AMOUNT(S) ACTUALLY RECEIVED BY THERMAXX FROM CUSTOMER AS PURCHASE PRICE FOR THE MATERIALS WHICH GIVE RISE TO THERMAXX'S LIABILITY.

### **8. INDEMNIFICATION.**

Customer agrees to indemnify, hold harmless and defend Thermaxx (and its employees, subsidiaries, affiliates, successors and agents) from and against any and all claims, judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and attorneys' fees) incurred or suffered by Thermaxx which relate to or arise out of Customer's purchase, use, handling, sale or distribution of the materials sold hereunder.

### **9. WAIVER.**

Thermaxx shall not be deemed to have waived any provision hereof, or any breach by Customer of any provision hereof, unless such waiver is specifically set forth in writing and executed by an authorized officer of Thermaxx. No waiver by Thermaxx of any provision hereof or any breach by Customer

hereunder shall constitute a waiver of such provision on any other occasion or a waiver of any other breach by the Customer.

### **10. FORCE MAJEURE.**

In no event shall Thermaxx have any liability to Customer for any delayed performance or nonperformance by Thermaxx which results, in whole or in part, directly or indirectly, from any cause beyond the reasonable control of Thermaxx. Such causes shall include (but shall not be limited to) acts of God, wars, riots, civil disturbances, diseases, epidemics, pandemics, quarantines, strikes, labor disputes, fires, storms, floods, earthquakes, natural disasters, inability to obtain or use raw materials or labor, equipment, facilities, or transportation, and acts of any government or agency thereof. In the event of any of the foregoing, Thermaxx may cancel the Quote without any liability.

### **11. GOVERNING LAW.**

These Terms and Conditions and the transactions contemplated hereby shall be governed by, and construed and enforced in accordance with, the laws of the State of Connecticut without regard to its conflicts of law rules. In the event of any dispute, Customer consents to litigation or arbitration, to be determined in the sole discretion of Thermaxx, and to be held in the State of Connecticut. Customer expressly and unequivocally waives any and all rights it may have to trial by jury.

### **12. SEPARABILITY.**

The invalidity or unenforceability, in whole or in part, of any provision, term or condition hereof shall not affect the validity and enforceability of the remainder of such provision, term or condition or of any other provision, term or condition, and, to the extent possible, such invalid or unenforceable provision shall be replaced by a provision most nearly reflecting the fundamental objectives of the original provision.

### **13. PREJUDGMENT REMEDY.**

Customer acknowledges that the sale of materials under the Quote is for commercial purposes. Customer hereby waives its right to a notice or hearing under sections 52-278a through 52-278f of the Connecticut General Statutes with respect to any attachment, garnishment, replevin or any other prejudgment remedy Thermaxx may desire to use in any litigation or arbitration relating to the Quote.

### **14. TAXES.**

Prices quoted are exclusive of taxes except as specifically included. The amount of any present or any future occupation, sales, use service, excise or other similar tax which Thermaxx may be liable for, either on its own behalf or on behalf of Thermaxx, with respect to any orders for materials, shall be in addition to the total price and be paid by Customer.