

# THERMOSEAL INDUSTRIES, LLC

## GENERAL TERMS, CONDITIONS OF SALE, AND WARRANTY

**1. ORDER ACCEPTANCE:** All orders are subject to final acceptance by Thermoseal Industries, LLC ("Thermoseal") and the formation of a valid contract for sale, is EXPRESSLY CONDITIONED on the Customer's ("Customer") acceptance of the general terms and conditions as set forth herein and any additional terms and conditions indicated on the Sales Order, price list or quotation. Thermoseal does not agree to be bound to any terms and conditions set forth in any of the Customer's contract documents, specifications, or purchase orders that may be provided to Thermoseal prior to, contemporaneous with, or subsequent to the specific order from the Customer. No failure of Thermoseal to object to any terms and conditions contained in any communication from the Customer will be construed as a waiver of the terms and conditions stated in this document or an acceptance by Thermoseal of any such terms and conditions. If this document is a Thermoseal invoice, it contains the entire agreement of Thermoseal and the Customer. The Customer's acceptance of products shipped by Thermoseal under this document will constitute acceptance by the Customer of all of the terms and conditions stated in this document.

**2. PRICE:** Prices shown on the face of the sales invoice are F.O.B. the place of shipment as designated by Thermoseal and subject to change. Prices, terms and conditions of sale are subject to change without notice. Unless specifically indicated otherwise in writing, all orders are deemed to be at the price prevailing at the date of shipment. Any manufacturer's tax, retailers' occupation tax, sales tax, excise tax, duty, custom, inspection or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any government authority, on or measured by any transactions between Thermoseal and the Customer, will be paid by the Customer in addition to the prices quoted or invoiced. In the event Thermoseal is required to pay any such tax, fee or charge, the Customer will reimburse Thermoseal for it, or, in lieu of such payment, the Customer will provide to Thermoseal in a timely manner an exemption certification or other document acceptable to the authority imposing any such tax.

**3. TERMS OF CREDIT:** All credit terms are net 30 days from the date of the invoice unless otherwise stated on the invoice. Any deductions from the net invoice amount must be approved by an authorized representative of Thermoseal. Goods shipped prior to credit approval will be shipped only if advance payment is made. If at any time during Thermoseal's performance with respect to an order, Thermoseal, in its sole discretion, determines that the Customer does not warrant the payment terms originally agreed to, Thermoseal may require full or partial payment in advance before proceeding with the order. A 1-1/2% per month charge (or, if less, the highest rate allowed under applicable law) will be assessed on past due amounts. A \$75 charge will be applied for each returned check.

**4. SHIPMENT OF GOODS / RETURN OF GOODS:** Glass is a frangible product with variable yields; therefore, all orders will be considered complete when quantity shipped is within +/-10% of the quantity ordered, with a minimum of +/- of one unit. Every effort will be made to ship the goods on the scheduled shipment date and to maintain production schedules consistent therewith. Thermoseal will not be liable, however, for any claims arising from the failure to meet any scheduled shipping dates. No custom products or custom sizes may be returned to Thermoseal for credit unless those products are not consistent with an acknowledged order or they are defective. If they are defective, Thermoseal reserves the right to correct the defect at the ship-to location. Customer assumes the risk of any return shipment damage or loss, the cost of which will be assessed by Thermoseal and will be subtracted from any credit. Acceptance & rejections of products will be in accordance with defect criteria set forth in Industry Specification ASTM C1036-01 and C-1048-04, and C-1376-03, and prevailing Thermoseal quality standards.

### **5. LIMITED WARRANTIES:**

**DOOR SYSTEM WARRANTY** - The products which Thermoseal manufacture and offer for sale are warranted to: (i) be free from defects in materials and workmanship; and (ii) perform in accordance with applicable refrigeration standards as of the date of manufacture for a period of 15 months from the date and place of shipment, provided that the installation and maintenance of such products have been performed strictly in accordance with Thermoseal's designated specifications (the "Warranty"). The extent of Thermoseal's liability under the Warranty is limited to the repair or replacement, at Thermoseal's option, of any non-conforming products without charge, at Thermoseal's Irving manufacturing plant. Additionally, Thermoseal will replace sealed glass units that are part of an original Thermoseal-manufactured door based on the specific warranty provided by its insulated glass units warranty listed below. Thermoseal reserves the right to change its warranty provisions at its sole discretion at any time with or without prior notification of such change.

**INSULATING GLASS WARRANTY** - Thermoseal warrants that its insulating glass units (IGU's) against seal failure and internal condensation for a period of 5-years after manufacture for single-sealed IGU's, High-Temp Application Units, and for a period of 10-years after manufacture for dual-sealed IGU's and IGU's produced on our automated SuperSpacer™ IGU production line.

This limited warranty extends only to original purchasers of new Thermoseal insulating glass units and door products purchased directly from Thermoseal, and not to anyone to whom the initial buyer may resell these units. This limited warranty only applies to Thermoseal insulating glass units and door products which have been paid for in full.

Thermoseal shall be relieved of all obligations and liability under the foregoing limited door and insulating glass warranties, if: (i) the unit has not been stored or installed with adequate support under each lite; (ii) the unit has been stored or installed in a high moisture environment, including without limitation, swimming pools, greenhouses and the like; (iii) the unit is stored or installed in any high vibration environment; (iv) seal integrity is breached by glass breakage or other damage to the unit in transit, storage, or installation; (v) the unit is stored or installed in a location more than 2500 ft above sea level or 1000 feet below sea level without capillary tubes or other Thermoseal-approved altitude compensation; (vi) the unit is altered or repaired without Thermoseal's knowledge and consent; (vii) the insulating glass unit is exposed to temperatures in excess of 250 degrees F or the vinyl door components are exposed to temperatures above 135 degrees F for a sustained period of time; (viii) the unit has been stored or installed in a high humidity warehouse or location w/ limited air circulation; (ix) application of any ammonia-based cleaning products to glass surfaces of a Thermoclear door. Thermoseal does not warrant against condensation in high temperature silicone-sealed insulating glass units.

If any properly handled or installed unit is found to be defective in [materials or workmanship] during the warranty period, Customer shall provide prompt written notice to Thermoseal describing the defect, the date of shipment, and the date of discovery. If Thermoseal finds the unit defective in material or workmanship, Thermoseal will fulfill the warranty provided above; however, if the unit is not defective, Customer will pay Thermoseal's costs and expenses in investigating the claim. In any event, Customer agrees to make available to Thermoseal any defective unit for diagnostic purposes and to render necessary and friendly assistance without compensation in dealing with end users of any installed unit.

**GASKETS** - TPV and Extended Life gaskets are warranted to be free from defects in material and workmanship for a period of three (3) years from the date of shipment. This warranty applies exclusively to TPV and Extended Life gasket components and is subject to all other terms, conditions, and limitations outlined in this warranty document

**No Warranty for Non-Standard Products.** A "Non-Standard Product" is any product that is different in any manner from any Thermoseal product that has been previously designed and manufactured by Thermoseal in accordance with its standard specifications. A Non-Standard Product also includes any standard Thermoseal product that has been specially designed or modified to meet a particular Buyer specification, or that contains any additional or substituted product, part, accessory, equipment, fixture, component or material, or that has been assembled, manufactured, produced, or installed by any method or process, which is different from Thermoseal's standard specifications for such product. Thermoseal expressly disclaims and make no warranties, express or implied, as to the condition, design, utility, quality, adequacy, or capacity with respect to any standard or Non-Standard Product, including, without limitation, any warranty of merchantability or fitness of such product for a particular purpose or intended use, whether or not such product has been designated by Thermoseal as a Non-Standard Product. All Non-Standard Products, whether sold separately, or incorporated and/or attached to standard Thermoseal products, and all services relating to such products, are sold to and accepted by Buyer "as is" and "with all faults." Without limiting any other provision of this purchase order, Thermoseal shall have no liability to Buyer for any claim, loss, damage, consequential damages or expense associated with any Non-Standard Product and/or its use or operation, or any other equipment or property of Buyer caused by or alleged to be caused by any such product or its use or operation, whether directly, indirectly, incidentally or consequentially, or by any inadequacy thereof or deficiency or defect therein.

THE PRECEDING EXPRESS LIMITED WARRANTIES ARE THE EXCLUSIVE WARRANTIES MADE BY THERMOSEAL AND THERMOSEAL MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS SOLD IN CONNECTION WITH THIS DOCUMENT, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER. **THERMOSEAL SHALL NOT BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO INJURY TO PERSONS OR PROPERTY.** THE EXPRESS LIMITED WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY WRITTEN INSTRUMENT SIGNED BY A MANAGER OF THERMOSEAL AND CUSTOMER.

**6. LIMIT ON REMEDIES IN EVENT OF FAILURE:** IN THE EVENT ANY THERMOSEAL PRODUCT FAILS TO PERFORM AS WARRANTED, THERMOSEAL'S SOLE RESPONSIBILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER ANY WARRANTY, CONTRACT, NEGLIGENCE, OR OTHER CLAIM OF LIABILITY, SHALL BE LIMITED TO A REFUND OF THERMOSEAL'S ORIGINAL SELLING PRICE EXCLUSIVE OF FREIGHT AND ANY SURCHARGES OR, AT THERMOSEAL'S OPTION, FURNISHING THE CUSTOMER WITH ANOTHER PRODUCT WITHOUT CHARGE F.O.B. IRVING, TEXAS OR SUCH OTHER LOCATION AS DETERMINED BY THERMOSEAL. THE FOREGOING WILL BE THE EXCLUSIVE REMEDIES AVAILABLE TO THE CUSTOMER AGAINST THERMOSEAL FOR ANY DEFECTS IN THE PRODUCTS SOLD IN CONNECTION WITH THIS DOCUMENT OR FOR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING THERMOSEAL'S NEGLIGENCE. IN NO EVENT, SHALL THERMOSEAL BE LIABLE FOR COST INCURRED IN THE REMOVAL OF FAILED PRODUCTS, THE INSTALLATION OF REPLACEMENT PRODUCTS, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS OF CUSTOMER, WHETHER FOR DEFECTIVE OR NONCONFORMING PRODUCTS, BREACH OR REPUDIATION OF ANY TERM OR CONDITION OF THIS DOCUMENT, NEGLIGENCE, OR ANY OTHER REASON. IN THE EVENT A PRODUCT IS REPLACED PURSUANT TO ANY APPLICABLE THERMOSEAL WARRANTY, THE REPLACEMENT PRODUCT IS WARRANTED ONLY FOR THE REMAINDER OF THE WARRANTY PERIOD APPLICABLE TO THE ORIGINAL PRODUCT. THERMOSEAL SHALL NOT BE LIABLE FOR ANY ALLEGEDLY DEFECTIVE PRODUCT UNLESS THERMOSEAL FIRST HAS THE RIGHT TO INSPECT SUCH PRODUCT AND VERIFY THE DEFECTIVE CONDITION.

**7. CLAIMS BY CUSTOMER:** All claims by Customer against Thermoseal, including claims for alleged shortages and external cosmetic surface defects (Scratches, Rubs, Chips, etc...), must be made in writing and delivered to Thermoseal within 15 days of receipt of the goods. Thermoseal shall thereupon be afforded a reasonable opportunity to inspect the goods. All claims must be substantiated with photographs showing the defect so a member of Thermoseal's sales or operations staff can review, inspect or approve. All claims not made in the time period and manner specified above shall be deemed waived.

**8. SUITABILITY OF PRODUCTS:** Customer shall be solely responsible for determining the suitability for use of the products purchased from Thermoseal. Thermoseal employees and agents are not authorized to determine if a product is suitable for use and may not be relied upon by the Customer.

**9. PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES:** Except in the particulars specified by Customer and expressly agreed to in writing by Thermoseal, all material shall be produced in accordance with Thermoseal's standard practices. All material, including that produced to meet an exact specification, shall be subject to tolerances and variations consistent with usage in the trade and industry practice concerning dimension, weight, straightness, section, composition and mechanical properties, normal variations in surface, internal conditions and quality, and deviations from tolerances and variations consistent with practical testing and inspection methods.

**10. DEFAULT:** If Customer defaults on the purchase of any goods or if a petition in bankruptcy is filed by or against Customer, then Thermoseal, in addition to other remedies, may repossess any goods which were previously delivered and for which payment has not been received and may refuse to make further shipment of goods. Customer agrees to pay Thermoseal's costs and expenses of collection of any amounts owed to Thermoseal or repossession including the maximum attorney's fee permitted by law.

**12. WE ASSUME NO RESPONSIBILITY FOR BREAKAGE IN TRANSIT:** Breakage on arrival should be noted on Bill of Lading and a claim filed PROMPTLY with the freight carrier. The filing of this claim is the Customer's responsibility.

**13. BLANKET ORDERS (BOs):** BOs include orders with multiple delivery dates. BOs require an order and an agreed upon delivery date before production will be scheduled. The entire blanket order will be taken within 6 months of the original purchase order, unless otherwise agreed to, in writing, by Thermoseal. Should Customer not take delivery of BOs within 60 days after the applicable delivery date, the Customer shall pay for and take such BOs or pay for such BO products and any associated disposal costs. If the delivery date is postponed, the Customer shall pay the energy surcharge of the original due date or the actual delivered due date, whichever is higher. In event that Thermoseal agrees to hold inventory, a monthly storage fee of 5% of the held order will be assessed 60 days after the original delivery date. In the event the Customer has a BO and requests a stocking level which is automatically replenished upon shipment, the 60 day period will commence after the last shipment.

**14. RACKS:** When steel racks are utilized for product shipments to customer, they are expected to be returned to Thermoseal (at Customer's expense) within 60 days from date of shipment in full truckload quantities, unless other arrangements are made. Steel racks, including gates, that are not returned to Thermoseal within 60 days from date of shipment are subject to a minimum replacement charge of \$750 per rack. Rolling steel racks (dolly bases) are subject to a \$2,000 minimum replacement charge. Customer will not use the racks for internal business operations or for any purpose other than receipt of material sent to the Customer's facility.

**15. CANCELLATIONS:** Cancellation of any acknowledged Customer purchase order placed with Thermoseal must be approved in writing by Thermoseal. Thermoseal will endeavor to stop all of its work with respect to such order within a reasonable time after Thermoseal receives and approves the Customer's request to cancel and the Customer agrees to pay Thermoseal an amount equal to 10 percent (10%) of the purchase price of the order, plus the cost of all materials and work furnished or completed at the time of the requested cancellation by the Customer.

**16. SHIPPING SCHEDULES; FORCE MAJEURE:** All quoted shipping schedules are approximate and will depend upon prompt receipt by Thermoseal of all Customer credit information. Thermoseal may make delivery in lots or installments, unless otherwise expressly agreed, and all such lots or installments may be the subject of separate invoices which are to be paid when due under each invoice and without regard to subsequent deliveries. Thermoseal will not be liable for any penalty for failure to meeting shipping schedules unless Thermoseal has specifically agreed to such penalty, in writing, signed by an officer of Thermoseal. Thermoseal will not be liable for any damage caused as a result of any delay in delivery or failure to deliver due to any cause beyond Thermoseal's reasonable control, including, without limitation, Acts of God; any act of the Customer; embargo or other governmental act, regulation or request; fire; accident; strike; slowdown; war; riot; flood; delay in transportation; or inability to obtain necessary labor, materials, fuel, power, or manufacturing facilities ("Force Majeure Events). In the event of any Force Majeure Event, Thermoseal may extend the date of delivery for a period equal to time lost by reason of the Force Majeure Event or to adjust upon notice to the Customer the prices payable under this document to defray such increases. Delay in delivery of any lot or installment or exercise of the right to increase price will not relieve the Customer of the Customer's obligation to accept remaining deliveries.

**17. COMPLETE AGREEMENT:** This document and any additional terms and conditions indicated on the Sales Order, price list or quotation, in each case, provided by Thermoseal, constitutes the entire agreement between Thermoseal and Customer. This document will be governed by the laws of the State of Texas. This document cannot be amended or modified as against Thermoseal, except by a writing signed by an authorized officer of Thermoseal. No claim or right of Thermoseal arising out of any breach of any of the Customer's obligations to Thermoseal may be discharged by any purported waiver or renunciation unless such waiver or renunciation is made expressly by Thermoseal, in writing and is supported by appropriate consideration. If any provision of the terms and conditions specified herein shall be deemed invalid or unenforceable, the remaining terms and conditions shall be construed as though such provision does not appear herein and shall be otherwise fully enforceable.