

Terms and Conditions of Sale

Latest version dated 01/01/2023

In the event of any discrepancy or inconsistency between the English version and the French version of these terms and conditions, the French version shall prevail.

Preamble:

These terms are entered into between:

The company THERMOLABO, a simplified joint-stock company (SASU) under French law, with registered office at 171 rue du Haut Planil, 69440 Saint Laurent d'Agny, registered with the Lyon Trade and Companies Register under number 817703614 00013, hereinafter referred to as THERMOLABO.

And between,

Any natural or legal person, whether private or public, wishing to acquire Products and/or Services (subscriptions, access to software and cloud platforms, preparation services, maintenance and after-sales services, etc.) provided by THERMOLABO, hereinafter referred to as the CLIENT.

ARTICLE 1: OBJECT

These General Terms and Conditions of Sale (GTC), supplemented where applicable by Special Conditions (SC) and/or annexes proposed by THERMOLABO, detail the rights and obligations of the company THERMOLABO and its CLIENT in the context of the sale of Products and/or Services provided by THERMOLABO.

They apply to any order placed by the CLIENT with THERMOLABO, which implies the full and unconditional acceptance by the CLIENT of these Conditions prevailing over any other conditions, including those of the CLIENT.

The services offered by THERMOLABO free of charge are also governed by these general Terms and Conditions of Sale.

ARTICLE 2: DEFINITIONS

CLIENT: Refers to any natural or legal person, whether private or public, acquiring Products and/or benefiting from THERMOLABO's Services.

SPECIAL CONDITIONS: Refers to specific contractual conditions accepted by the CLIENT and applicable to the chosen Product(s) and/or Service(s), whether optional or not.

CONTRACT: Refers to the set consisting of these GTC and the applicable Special Conditions.

SOFTWARE: Refers to all applications, software packages, databases, scripts, operating systems made available to the CLIENT by THERMOLABO in the context of the sale of Products and/or Services.

THERMOLABO: Supplier of the Products and provider of the Services covered herein.

PARTY or PARTIES: Refers, together or separately, and interchangeably, to THERMOLABO and/or the CLIENT.

PRODUCT(S): Refers to all the PRODUCTS offered by THERMOLABO allowing the recording of environmental measurement data, their reading, and programming, as well as all optional accessories available.

SERVICE(S): Refers to all the Services offered by THERMOLABO relating to the management of environmental measurement data recording devices and/or the collection, processing, transmission, storage, and hosting of all information and measurement data directly or indirectly from these devices, and where applicable, to optional or non-optional preparation, programming, maintenance, after-sales services subject to change over time.

REPRESENTATIVES: Refers to all parties, service providers, and subcontractors acting on behalf and for the account of THERMOLABO and/or the CLIENT.

ARTICLE 3: PRICES - OFFERS - ACCEPTANCE OF ORDERS - CONFIRMATION

The prices of the Products and Services sold are those in force on the day the order is placed. They are in Euros and calculated excluding taxes. Prices are understood ex-works, excluding all duties and taxes of any kind and transport and packaging costs.

Consequently, if applicable, they will be increased by the VAT rate and transport costs on the day of the order. In particular, in the case of exportation, taxes, customs duties, and any other charges or fees applicable on the day of delivery will be included in addition to the price of the Product or Service by THERMOLABO or one of its Representatives to the CLIENT or its designated recipient.

Unless otherwise stipulated, THERMOLABO's offers are valid for a period of 30 days. After this period, in the absence of an order from the CLIENT, THERMOLABO reserves the right to modify them. The purchase orders/quotes signed and submitted by the CLIENT to THERMOLABO are subject to confirmation by THERMOLABO in the form of an electronic acknowledgment within five (5) business days following receipt of the signed purchase order/quote. The contract consists of the order confirmation and these General Terms and Conditions of Sale.

THERMOLABO reserves the right to modify its prices at any time.

ARTICLE 4: RETENTION OF TITLE

Ownership of the Products will only be transferred to the CLIENT upon full payment of the corresponding price, principal and accessories. In the event of non-payment of a fraction of the price by the due date, THERMOLABO may take back the delivered Products and terminate the sale.

In this regard, in the event of the CLIENT being subject to receivership or judicial liquidation, THERMOLABO reserves the right to claim, in the context of the collective proceedings, the sold goods that remain unpaid.

The aforementioned provisions shall not preclude the transfer to the CLIENT of the risks relating to the loss and/or deterioration of the Products and the damages they may cause from the moment they are delivered, and this, from the departure of the Products from THERMOLABO's premises. The CLIENT shall take out any appropriate insurance policy to cover these risks with a reputable insurance company and shall provide evidence of such insurance upon simple request.

ARTICLE 5: DELIVERIES - TRANSPORT

Delivery and/or performance times are indicative, are not guaranteed, and may be modified depending on THERMOLABO's workload, supply constraints, or changes to orders accepted by THERMOLABO.

Consequently, any reasonable delay in the delivery of Products and/or the performance of Services cannot give rise to the CLIENT's entitlement to damages and/or cancellation of the order.

Unless expressly requested by the Client, the delivery of the Products is carried out by a carrier chosen by THERMOLABO in the best interests of the Client. Unless otherwise stipulated, the Products are delivered to the address specified on the purchase order and the order confirmation.

The risk of transport is entirely borne by the CLIENT. In the event of missing or damaged goods during transport, the CLIENT or its designated recipient Representative must make all necessary reservations on the purchase order upon receipt of said goods. These reservations must also be confirmed in writing within five days following delivery, by registered letter with acknowledgment of receipt to the carrier and electronically to THERMOLABO.

ARTICLE 6: PAYMENT CONDITIONS

The CLIENT expressly agrees to receive invoices electronically. THERMOLABO reserves the right to pass on, without delay, any new taxes or increases in existing tax rates.

Invoices issued by THERMOLABO are payable by bank transfer or by check upon receipt of the invoice by the CLIENT. Early payments do not qualify for any discount or rebate.

Upon placing an order, the CLIENT must pay a deposit of 30% of the total VAT-inclusive amount of the invoice for any invoice exceeding €2000 exclusive of VAT, with the balance to be paid upon receipt of the invoice.

Furthermore, for any first order or in the event of payment default, THERMOLABO reserves the right to make the acceptance of an order conditional on providing guarantees in its favor or payment upon order.

Total or partial non-payment by the due date of any amount due under the Contract may result, without prior notice:

- in the immediate exigibility of all remaining sums due by the CLIENT under the Contract, regardless of the intended method of payment;
- in the suspension of all access to software and ongoing services, regardless of their nature, without prejudice to THERMOLABO's right to terminate the Contract;
- in the impossibility of ordering new Products or subscribing to new Services or renewing them.

Any default in payment or irregular payment, including, but not limited to, incorrect or incomplete amounts, may result in the demand for payment of the entire outstanding amount.

In case of late payment, the CLIENT is automatically liable to THERMOLABO for a lump sum indemnity for recovery costs amounting to 60% of the amount of the invoice, plus 11% of October 2, 2012, and for the application of late payment penalties at a rate three (3) times the legal interest rate in force. Late payment penalties are payable without the need for a reminder.

ARTICLE 7: OBLIGATIONS AND LIABILITY OF THERMOLABO

For all its Services and the operation of its Products, THERMOLABO undertakes to exercise all due care and diligence necessary to provide a quality service in accordance with professional practices and state of the art. THERMOLABO is only bound by an obligation of means.

THERMOLABO's liability shall not be engaged: If the performance of the Contract, or of any obligation incumbent upon THERMOLABO under these terms, is prevented, limited, or disturbed by fire, explosion, failure of transmission networks, collapse of installations, epidemic, pandemic, earthquake, flood, power outage, war, embargo, law, injunction, demand, or requirement of any government, strike, boycott, withdrawal of administrative authorization, or any other circumstance beyond the reasonable control of THERMOLABO ("Force Majeure" within the meaning of Article 1148 of the Civil Code), then THERMOLABO, subject to prompt notification to the CLIENT, shall be released from the performance of its obligations to the extent of such prevention, limitation, or disturbance, and the CLIENT shall likewise be released from the performance of its obligations to the extent that the obligations of that Party are affected by the performance thus prevented, limited, or disturbed, provided that the affected Party makes its best efforts to avoid or remedy such causes of non-performance and that both Parties proceed promptly once such causes have ceased or been removed. The Party affected by Force Majeure shall regularly inform the other Party by email of the forecasts for the removal or restoration of such Force Majeure.

Furthermore, THERMOLABO's liability shall not be engaged due to actions of the CLIENT, especially in the following cases:

Deterioration of Software,

Improper use of Products by the CLIENT or its Representatives, fault, negligence, omission, or failure on its part, failure to follow advice given,

Disclosure or unlawful use of the confidential password transmitted and/or chosen by the CLIENT,

Fault, negligence, or omission of a third party over which THERMOLABO has no control or supervision,

Request for temporary or permanent interruption of the Service from a competent administrative or judicial authority,

Partial or total destruction of the transmitted or stored information as a result of errors directly or indirectly attributable to the CLIENT or its Representatives.

THERMOLABO is unable to guarantee the CLIENT continuous and permanent availability of Hosting Service and access to software.

The CLIENT acknowledges hereby that bandwidth fluctuations and the vagaries of access or hosting providers of Software may result in difficulty accessing the Software and/or a discontinuity in the services offered by THERMOLABO, beyond its technical means.

THERMOLABO makes its best efforts to provide the Services, subject to maintenance periods. THERMOLABO reserves the right to interrupt the Services for maintenance and/or service improvement work. These interruptions of Services will, to the extent possible for THERMOLABO, be notified to the CLIENT prior to any interruption.

In case of emergency, however, THERMOLABO reserves the right to partially or completely suspend the Services for a reasonable period to carry out any necessary technical operation. These interruptions of Services shall not entitle the CLIENT to any compensation.

Given the characteristics and limitations of the Internet, which the CLIENT declares to be fully aware of, THERMOLABO's liability shall not be incurred in any event, particularly in cases of difficulty in accessing the Software, contamination by viruses of the CLIENT's data, malicious intrusions by third parties, possible misuse of identifiers and passwords, despite all security measures taken by THERMOLABO.

Thus, hereby, THERMOLABO grants the CLIENT, for the duration of the Contract, a personal, non-exclusive, non-transferable license to use.

The CLIENT hereby acknowledges that the manipulation and/or reprocessing of raw data directly or indirectly from recording devices, which may or may not lead THERMOLABO to provide indications regarding the acceptability or otherwise of the monitored products, do not have a pharmaceutical status and shall not engage the liability of THERMOLABO in decisions made by the CLIENT, particularly those relating to the pharmaceutical release of the monitored products.

In any case, the interpretation of raw data and processed information directly or indirectly from recording devices is the responsibility of the CLIENT.

THERMOLABO undertakes to exercise all due care and diligence necessary for the management of recording devices dedicated to the CLIENT's activity and to make reasonable efforts at all times to preserve the interests of the CLIENT.

Unless otherwise provided in the Special Conditions, the CLIENT acknowledges that reusable or non-reusable recording devices provided by THERMOLABO remain under its responsibility, especially in case of non-use, loss, theft, damage, total or partial destruction, or misuse.

In the event that an event necessitates the replacement of one or more recording devices, the replacement costs shall be borne by the CLIENT.

The repairs owed by THERMOLABO in the event of a Product or Service failure resulting from a proven fault on its part shall correspond to the direct, personal, and ascertainable damage related to the specific failure, expressly excluding any indirect damages such as, but not limited to, commercial loss, product loss, loss of orders, damage to brand image, any commercial disruption, loss of profits or customers (for example, alarm failure, measurement error, or untimely disclosure of confidential information due to system defect or hacking, third-party action against the CLIENT, etc.).

In any event, the amount of damages that could be attributed to THERMOLABO, if its liability were to be established, shall be limited to the amount actually paid by the CLIENT to THERMOLABO for the Products and/or the relevant Service period, or invoiced to the CLIENT by THERMOLABO, or to the amount corresponding to the price of the Products or Services, for the portion of the Products or Services for which THERMOLABO's liability has been established. The lesser of these amounts shall be considered.

The CLIENT acknowledges that no provision herein shall exempt them from the obligation to pay all amounts due to THERMOLABO for the purchased Products or rendered Services.

ARTICLE 8: CLIENT'S OBLIGATIONS AND LIABILITY

The CLIENT undertakes to have the power, authority, and capacity necessary for the conclusion and execution of the obligations provided herein.

The CLIENT shall take all necessary measures to ensure compliance with the provisions of these General Terms of Service and any applicable Specific Conditions regarding the use of the Products and each Service by its staff members and Representatives.

The CLIENT accepts full responsibility in the event of any breach or violation of this Agreement by its staff members or Representatives.

THERMOLABO disclaims any liability for any unlawful or fraudulent use of passwords provided exclusively to each Representative of the CLIENT or generated by the CLIENT itself. The provision of passwords is considered confidential. Any suspicion of intentional or unintentional disclosure of provided passwords solely implicates the CLIENT's responsibility, excluding that of THERMOLABO. Furthermore, the CLIENT acknowledges that it has exclusive control over its email accounts, particularly regarding regular access, the confidentiality of the credentials granting access, and the management of incoming mail reception and filtering settings.

The CLIENT shall bear sole responsibility for any malfunction of the Service resulting from the use of passwords by its staff members or any person to whom the CLIENT has provided its password(s). Similarly, the CLIENT bears sole responsibility for the consequences of the loss of the aforementioned password(s).

The CLIENT undertakes to comply with all applicable legal and regulatory requirements, particularly those concerning computing, files, freedom, intellectual property, as well as the rights of third parties. Additionally, the CLIENT agrees to obtain all necessary insurance from a reputable organization to cover any damages attributable to it under this Agreement or its execution.

The CLIENT undertakes to inform THERMOLABO within 48 hours of any changes to its situation and within 24 hours of any potential loss of passwords.

ARTICLE 9: SOFTWARE LICENSE

All Software or Computer Applications, regardless of their presentation or denomination, are considered intellectual works and as such, THERMOLABO remains the holder of intellectual property rights and/or license rights related to copyright that may be attached to certain Products and/or Services.

Only a personal and non-exclusive right of use as described herein is granted to the CLIENT against a lump-sum payment included in the price paid by the CLIENT. In accordance with the Intellectual Property Code, this right of use is granted in the strictest sense to the CLIENT, who may not, under any circumstances, decompile, copy, reproduce, represent, distribute, modify, adapt, translate, or transcribe in another language all or part of the Applications and/or their documentation by any means and in any form or have these actions performed by a third party.

All proprietary rights (including but not limited to copyrights, trademarks, methods, procedures, know-how) related to THERMOLABO's Services remain the exclusive property of THERMOLABO.

Unless expressly agreed otherwise, the CLIENT shall be granted an internal use license exclusively for the Products and Services provided by THERMOLABO.

The CLIENT is prohibited from distributing or commercializing, in any form whatsoever, the Products and Services (and their documentation) provided by THERMOLABO, without the prior agreement of the latter.

ARTICLE 10: INFORMATION - PRODUCT COMPLIANCE - WARRANTY

The CLIENT acknowledges having received all necessary advice and/or information for the use of the Products and/or Services under normal conditions of use and subscribes to this commitment knowingly.

The CLIENT acknowledges having verified the suitability of the Products and/or Services for its needs. It also acknowledges that it is its responsibility to inform THERMOLABO of its specific expectations regarding the use of the Products and/or Services through a specifications document. Consequently, the client acknowledges that THERMOLABO shall not be held responsible for the consequences of pre-contractual information deficits.

For the purpose of improving the provided Service and/or in case of regulatory changes, the Parties agree that THERMOLABO may, at its sole discretion, modify the Products and Services without further formality than informing the CLIENT through a notice on the website and/or by updating its terms and conditions.

In accordance with the provisions of the WEEE Directive and its implementing texts, the management of WEEE is the responsibility of the final holder of the Products.

The CLIENT is required to verify the conformity of the Products with the order and their condition upon arrival. The CLIENT must notify THERMOLABO of any claim electronically within 48 hours of the arrival of the Products whose defectiveness is attributable to THERMOLABO. After delivery, the Products and/or Services acknowledged as conforming to the acknowledgment of receipt will neither be returned nor modified.

The Products are guaranteed for one year, parts and labor, against any manufacturing defect, malfunction, or abnormal wear. This warranty does not cover, notably, the consequences of impacts, falls, drilling, or crushing, abnormal, very intensive use or outside the operating temperature range, abnormal storage conditions, negligence in the use of hardware or software, modification of hardware or software not performed by THERMOLABO.

The warranty given to the Products extends only to the replacement of defective parts and the restoration of the affected equipment, returned carriage paid to THERMOLABO's workshops, excluding all damages, interests, or incidental expenses. The start date of the warranty is the invoicing date of the relevant Product. The purchase invoice must be provided in support of any warranty claim. Repairs or interventions under warranty do not in any way extend the warranty period granted at the time of sale.

ARTICLE 11: PERSONAL DATA PROTECTION - COOKIES

In the course of its Services, the CLIENT is informed that THERMOLABO collects personal data concerning them, which are subject to automated processing under the conditions provided by the French Data Protection Act No. 78-17 of January 6, 1978, as amended in 2004, relating to data processing, files, and freedoms, and the European Regulation on the protection of personal data (GDPR) No. 2016/679 of April 27, 2016.

THERMOLABO may also transmit the CLIENT's personal information at the request of judicial and/or administrative authorities within the framework of a judicial requisition issued by a competent authority.

In accordance with the provisions of articles 38 and following of Law 78-17 of January 6, 1978, relating to data processing, files, and freedoms, any user has a right of access, rectification, and opposition to personal data concerning them, by making a written and signed request, accompanied by a copy of an identity document with the signature of the document holder, specifying the address to which the response should be sent. To do this, the CLIENT may contact THERMOLABO, data controller at any time by postal mail at the address THERMOLABO, 171 rue du Haut Planil, 69440 Saint Laurent d'Agny.

Once the contract is terminated, the collected personal data are archived for administrative purposes for a maximum period of 3 years.

By entering their email address on the THERMOLABO website, the CLIENT will receive emails containing information and offers concerning Products and Services sold by THERMOLABO or its Representatives. This consent can be revoked at any time by simple notification by electronic means.

When using the websites made available by THERMOLABO, the following information will be collected: the URL of the links through which the user accessed the site, the user's access provider, the user's Internet Protocol (IP) address.

In any case, THERMOLABO only collects personal information relating to the user for the needs of certain Services requiring individual identification. The user provides this information knowingly, especially when entering it themselves.

No personal information of a user is published without their knowledge, exchanged, transferred, assigned, or sold on any medium to third parties.

Browsing on the various websites of THERMOLABO may result in the installation of cookies(s) on the user's computer. A cookie is a small file that does not allow the identification of the user but records information relating to the browsing of a computer on a site. The data obtained in this way is intended to facilitate subsequent navigation on the site and is also intended to allow various traffic measurements.

ARTICLE 12: GENERAL PROVISIONS

12.1 Severability

The nullity of any clause of the Service Agreement entered into with THERMOLABO, in particular by virtue of a law, regulation, or as a result of a final and binding decision of a competent court, shall not affect the validity of the other clauses of the Service Agreement, which shall remain in full force and effect.

In such a case, the Parties shall, to the extent possible, replace the invalidated provision with a valid provision corresponding to the spirit and purpose of the contractual conditions.

12.2 Headings

The headings of the articles of the contractual conditions are for reference purposes only and do not themselves have contractual value or particular significance.

12.3 Communications

All notifications, communications, and formal notices by registered letter with acknowledgment of receipt provided for in the general terms and conditions shall be deemed validly delivered if addressed to:

For THERMOLABO: 171 rue du Haut Planil, 69440 Saint Laurent d'Agny

For the CLIENT: at the postal address provided to THERMOLABO.

12.4 Advertising and Promotion

THERMOLABO may, on the occasion of advertisements, events, in professional conferences, and specialized publications in professional markets, involve the Services provided to the CLIENT as well as on its commercial documents and/or brochure.

ARTICLE 13: APPLICABLE LAW AND JURISDICTION

Regardless of the place of conclusion of the Contract, these terms and conditions are governed by French law. This applies to both substantive and procedural rules, excluding, on the one hand, conflict rules provided by French law, and on the other hand, provisions of French law that are contrary to these conditions.

In the event of a dispute with a CLIENT, exclusive Jurisdiction is conferred on the Commercial Court of the registered office of THERMOLABO, including for urgent, interim measures, counterclaims, expert assessment, or on request, notwithstanding multiple defendants.

In the event of difficulty in the interpretation and/or application of these T&C, the Parties agree to attempt an amicable resolution prior to any legal action.