

GENERAL TERMS AND CONDITIONS

THERMOSMART B.V.

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TABLE OF CONTENTS

ARTICLE 1.	DEFINITIONS.....	1
ARTICLE 2.	APPLICABILITY AND PRECEDENCE	2
ARTICLE 3.	ESTABLISHING THE AGREEMENT	2
ARTICLE 4.	DELIVERY AND EXECUTION	2
ARTICLE 5.	RIGHT OF WITHDRAWAL	Fout! Bladwijzer niet gedefinieerd.
ARTICLE 6.	PRICES	3
ARTICLE 7.	CONFORMITY AND GUARANTEE	3
ARTICLE 8.	USE OF APPLICATIONS	3
ARTICLE 9.	DURATION AND TERMINATION	4
ARTICLE 10.	PAYMENT TERMS AND CONDITIONS.....	Fout! Bladwijzer niet gedefinieerd.
ARTICLE 11.	INTELLECTUAL PROPERTY RIGHTS.....	5
ARTICLE 12.	CHANGES TO THE TERMS AND CONDITIONS	5
ARTICLE 13.	OTHER PROVISIONS.....	5

ARTICLE 1. DEFINITIONS

The terms in the General Terms and Conditions that are written with a capital letter have the meaning as stated hereafter, unless a different meaning is attributed in the Agreement and/or General Terms and Conditions.

- 1.1. **General Terms and Conditions:** the provisions in the present document.
- 1.2. **App:** the application that a Customer can install on his or her smartphone or tablet or similar device in order to operate the Thermostat.
- 1.3. **Applications:** the combination of
 - a. the software (firmware etc.) installed by ThermoSmart on the ThermoSmart hardware;
 - b. the App;
 - c. the Web Application.
- 1.4. **Data:** all forms of information generated or processed by ThermoSmart Applications.
- 1.5. **Customer:** the natural or legal person with whom ThermoSmart enters into an Agreement with regard to using the Thermostat and/or other ThermoSmart services.
- 1.6. **Agreement:** the Agreement between the Customer and ThermoSmart under which ThermoSmart will perform the Agreement and of which the General Terms and Conditions are an integral part.
- 1.7. **ThermoSmart:** the limited company ThermoSmart B.V., established in Arnhem and registered with the Dutch Chamber of Commerce under file number 58813128.
- 1.8. **Thermostat:** the smart thermostat supplied by ThermoSmart B.V. and essentially consisting of the hardware, the pre-installed firmware, App and Web Application.
- 1.9. **Web Application:** the web portal for controlling the Thermostat.

- 1.10. **Website:** the ThermoSmart website www.thermosmart.nl.

ARTICLE 2. APPLICABILITY AND PRECEDENCE

- 2.1 These General Terms and Conditions apply to all offers from ThermoSmart and to using the Applications and are an integral part of every Agreement.
- 2.2 Provisions or conditions set by the Customer that deviate from, or are not included in, these General Terms and Conditions only commit ThermoSmart if and to the extent they have been accepted in writing by ThermoSmart.

ARTICLE 3. ESTABLISHING THE AGREEMENT

- 3.1 The Agreement between ThermoSmart and the Customer is established after the Customer has made an electronic order via the Website and this has been confirmed in writing by ThermoSmart. The Website states the amount that will be due and in this regard, the description of the products and/or services as stated on the Website is binding. Obvious errors or obvious mistakes in the offer are not binding for ThermoSmart.
- 3.2 ThermoSmart is, at all times, entitled to refuse an Account and/or an electronic order, and it is thereby not bound to state the reason.

ARTICLE 4. DELIVERY AND EXECUTION

- 4.1 ThermoSmart will take the greatest possible care in receiving and executing product orders and with evaluating requests for the provision of services.
- 4.2 The place of delivery is the address the Customer has provided to the company.
- 4.3 In accordance with that stated in article 4 of these General Terms and Conditions, the company will execute accepted orders with due speed and within no later than thirty days, unless a longer delivery time has been agreed. If the delivery is delayed or the order cannot be completed, or only partially completed, the Customer will receive a notification no later than thirty days after placing the order. In that case, the Customer has the right to dissolve the Agreement at no cost and has the right to any damages.
- 4.4 In the event of dissolution according to the previous paragraph, ThermoSmart will reimburse the amount paid by the Customer as soon as possible and no later than thirty days after dissolution.
- 4.5 If it appears impossible to deliver an ordered product, ThermoSmart will make the effort to supply a replacement article. There will be a clear and comprehensible notification, no later than on delivery, that a replacement article is being delivered. The right of withdrawal cannot be excluded with replacement articles. The costs of any return shipment are for ThermoSmart.
- 4.6 The risk of damage and/or missing products rests with ThermoSmart until the time of delivery to the Customer, unless expressly agreed otherwise.

ARTICLE 5. RIGHT OF WITHDRAWAL

- 5.1 On purchasing products and/or providing services, the Customer has the possibility of dissolving the Agreement without reason during fourteen days after receiving the product or starting the service.
- 5.2 During the cooling off period, the Customer will handle the products and the packaging with care. As such, he or she will only unpack the product or use it to the extent required to assess whether he or she wants to keep the product. If he or she wants to exercise his or her right of withdrawal, then he or she will return the product to

ThermoSmart with all the delivered accessories and – if reasonably possible – in the original condition and packaging, and this according to the reasonable and clear instructions provided by ThermoSmart.

5.3 If the Customer exercises his or her right of withdrawal, the cost of return shipment is at his or her expense.

5.4 If the Customer has paid an amount, ThermoSmart will reimburse the amount as soon as possible and no later than thirty days after receipt of the return shipment.

ARTICLE 6. PRICES

6.1 The prices of products or services stated in the offer are inclusive VAT.

6.2 The shipment costs are clearly stated on the Website. Additionally, these costs will be displayed during the order process.

6.3 During the period of validity stated in the offer, the prices of the offered products and/or services will not be increased, excepting price modifications due to changes in VAT rates.

6.4 Price increases within three months of establishing the Agreement are only permitted if due to statutory regulations or provisions.

6.5 Price increases from three months after establishing the Agreement are only permitted if:

- a. These changes result from statutory regulations or provisions; or
- b. The Customer has the authority to dissolve the Agreement on the effective date on which the price increase will enter into force.

6.6 ThermoSmart will inform the Customer in writing of any changes at least thirty (30) days before entry into force or announce any changes through the services so that the Customer can take cognizance thereof.

ARTICLE 7. CONFORMITY AND GUARANTEE

7.1 ThermoSmart guarantees that the products and/or services comply with the Agreement, with the specifications stated in the offer, with the reasonable requirements of reliability and/or useability and with existing statutory provisions and/or government legislation on the effective date of concluding the Agreement. If agreed, ThermoSmart will also guarantee that the product is suitable for other than standard use.

7.2 A guarantee provided by ThermoSmart, the manufacturer or importer does not affect the legal rights and claims that the Customer can make against ThermoSmart based on the Agreement.

ARTICLE 8. USE OF APPLICATIONS

8.1 The Applications are made available to the Customer, who thereby only has the user rights of the Applications. The Applications remain the property of ThermoSmart at all times. Any other form of use is forbidden, unless expressly stated otherwise in writing by ThermoSmart.

8.2 The Applications may only be used by the Customer on the hardware and environment configuration (operating system etc.) as determined by ThermoSmart. The user rights are personally for the Customer and are not transferrable. The Customer may only use the Applications for the purpose for which they have been provided. Any other purpose (including collecting data or other data interactions and providing services to third parties) is forbidden. The Customer may not reverse engineer, decompile, change or develop derivate products or functionalities from the Applications.

- 8.3 A personal online environment is created for each Customer, based on the information provided by the Customer.
- 8.4 Without prejudice to the provisions related to privacy, and to the extent the Data is not the property of ThermoSmart, every Customer provides ThermoSmart with the unlimited, non-exclusive, free, worldwide, non-transferrable and royalty-free user rights for all Data or other elements generated or processed by the Applications for it to use for any purpose. This occurs automatically and without further formal requirements.
- 8.5 ThermoSmart is in no event liable for use (or lack of use) or loss of Data in or by Applications.
- 8.6 The functioning of the Applications depends on a number of environmental factors, which are beyond the responsibility of ThermoSmart. This is also understood to be, but is not limited to, the functioning of hardware and environment software, access to the internet or the functioning of wireless networks or another means of communication. As such, the Applications are delivered without a guarantee in relation to the permanent or qualitative character of their functionality. As such, ThermoSmart excludes any responsibility related to accessibility to and the operation of all functionalities of the Applications, including any possible consequences thereof.
- 8.7 ThermoSmart is in no event liable for the consequences for the Customer by using the Application.
- 8.8 The user rights allocated to the Customer can be terminated at any time by ThermoSmart subject to reasonable notice.

ARTICLE 9. DURATION AND TERMINATION

- 9.1 In the event the Agreement is intended for delivering a product, this is entered into for the duration required for delivering the product.
- 9.2 In the event the Agreement regards a term agreement, the following provisions apply.
- 9.3 The Agreement is entered into for the duration as stated on the Website. The Customer can terminate the Agreement in writing at any time subject to a notice period of one (1) month.
- 9.4 ThermoSmart has the right to terminate the Agreement with immediate effect if the Customer violates the conditions in the Agreement. The Customer has no right to a refund of any paid amounts.

ARTICLE 10. PAYMENT TERMS AND CONDITIONS

- 10.1 In as far as not agreed otherwise, the amount due by the Customer must be paid within fourteen days after the date of invoice.
- 10.2 ThermoSmart will send an invoice to the Customer for all payable amounts, and is thereby entitled to send electronic invoices. The Customer hereby agrees to electronic invoicing.
- 10.3 The Customer has the duty to immediately report to ThermoSmart any inaccuracies in the provided or stated payment details.
- 10.4 After the expiry of the payment deadline, the Customer is legally in default without notice being required. From that time, ThermoSmart is entitled to limit its service provisions, for example by restricting access to the service.
- 10.5 With late payment by the Customer, besides the outstanding amount and the interest incurred on that amount, the Customer is obliged to pay full compensation of the extrajudicial costs as determined and calculated according to the Act on compensation for extrajudicial costs.

ARTICLE 11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All intellectual property rights related to the products sold and delivered by ThermoSmart, as well as those related to the services performed by ThermoSmart, remain the property of ThermoSmart and/or its sub-contractor(s)/licensor(s), and they are its exclusive property. The delivery of a product or service originating from ThermoSmart cannot be considered as an express or implicit license for use, publication, reproduction, exploitation or disclosure to third parties of the intellectual property rights, unless ThermoSmart has given its express written permission.
- 11.2 All drawings, documents, technical data, specifications, instructions for use, recommendations and/or other information provided by ThermoSmart and/or its subcontractor(s)/licensor(s), which are or may be subject to the rights of intellectual property or a comparable right, remain the property of ThermoSmart and/or its subcontractor(s)/licensor(s), and will be returned to ThermoSmart on its first request.
- 11.3 The Customer will immediately inform ThermoSmart if he or she identifies that a third party is infringing on any intellectual property rights of ThermoSmart and/or its subcontractor(s)/licensor(s) or if a third party makes a claim against the Customer in relation to the intellectual property rights of ThermoSmart and/or its subcontractor(s) and/or licensor(s). If ThermoSmart so desires, it may provide the Customer with the desired reasonable assistance that may result in ending the infringement or dispute as soon as possible.
- 11.4 ThermoSmart is free to use all knowledge and ideas that ThermoSmart collects, generates and/or registers by performing the agreed services for implementing other projects.

ARTICLE 12. CHANGES TO THE TERMS AND CONDITIONS

- 12.1 ThermoSmart has the right to change these General Terms and Conditions at any time.
- 12.2 ThermoSmart will inform the Customer of any changes or additions at least thirty (30) days before coming into force. This will occur in writing or through the services so that the Customer can take cognizance thereof.
- 12.3 If the Customer does not want to accept a change or addition to the General Terms and Conditions, then he or she can terminate the Agreement until the effective date of the Agreement. Using the services after the effective date is considered as an acceptance of the changed or added conditions.

ARTICLE 13. OTHER PROVISIONS

- 13.1 Dutch law governs these General Terms and Conditions and all Agreements.
- 13.2 To the extent regulations in statutory law do not state otherwise, all conflicts related to the Agreement will be submitted to the competent Dutch court of the district in which ThermoSmart is established.
- 13.3 If a provision in these General Terms and Conditions requires a notification must be made 'in writing', this is also complied with if the notification is sent by e-mail, if there is sufficient proof that the message actually originated from the stated sender and if the integrity of the message has not been damaged.
- 13.4 The version of communication or information stored by ThermoSmart is considered to be correct, unless the Customer proves otherwise.
- 13.5 If a provision in these General Terms and Conditions appears to be invalid, that does not affect the validity of all the General Terms and Conditions and/or the Agreement. In that

event, the parties will establish (a) new provision(s) as a replacement, and which meets the purposes of the original provision to the extent that is legally possible.

- 13.6 ThermoSmart is entitled to transfer its rights and obligations from the Agreement to a third party or that a third party takes over the applicable business activity.