

## General Business Terms and Conditions of temp-rite International GmbH

### 1. Validity of the Conditions

Our General Business Terms and Conditions, which our customer agrees to accept on placing his order, shall apply exclusively. If an order is placed with conditions attached that diverge from our own General Business Terms and Conditions, our General Business Terms and Conditions alone shall apply, even if we raise no objection to the divergent conditions. The customer's General Business Terms and Conditions shall therefore only apply if they have been expressly accepted by us in writing in our confirmation of the order, or if a separate individual agreement has been concluded.

Our General Business Terms and Conditions shall also apply to all future transactions with the customer, even if this is not expressly agreed to.

### 2. Offer and Conclusion of Contract

2.1 Our offers are subject to confirmation and are non-binding. If we have not already demonstrated our acceptance of a customer's order(s) through actions we have taken, the order(s) placed by the customer shall only be deemed to have been accepted after we have confirmed the order(s) in question in writing (or by fax or email). Additions, amendments and subsidiary agreements shall only be valid if they have been confirmed by us in writing (or by fax or email).

2.2 Drawings, illustrations, dimensions, weights and all other performance data shall only be binding if this has been expressly agreed.

### 3. Prices

Unless some other agreement has been expressly reached, we shall be bound by the prices set out in our offers for 30 days from the date on which our offer was submitted. The prices specified by us plus statutory value-added tax shall apply. Unless expressly otherwise agreed, the prices shall be understood to be ex works, and shall include packaging.

### 4. Time of Delivery and Performance

4.1 The schedules and deadlines specified by us are non-binding unless some other agreement has been expressly drawn up in writing.

4.2 Even if binding agreement has been reached on schedules and deadlines, we shall not be held liable for delays in deliveries made, and services provided, if these delays have been caused by force majeure events (e.g. mobilization, war, riot, or unforeseen events which, through no fault of our own, make delivery significantly more difficult or impossible), and such force majeure events shall further include subsequently occurring difficulties in procuring materials, breaks in production, strikes, lockouts, shortages of personnel, difficulties in the manufacturing process or in transportation, administrative decrees, etc., even if it is our suppliers or their sub-suppliers who are affected by such events. We shall also bear no liability for the aforementioned circumstances if they occur during an existing delay. If any of the listed circumstances arise(s), we shall be entitled to postpone making a delivery, or providing a service, by a period corresponding to the duration of the hindrance plus a reasonable lead time. Schedules and deadlines shall also be extended as appropriate if the customer fails in a timely manner to meet his contractual obligations, or his obligation to cooperate, and, in particular, if he fails to supply essential documentation at the proper time.

4.3 If any of the circumstances outlined at 4.2 arise(s), and as a result of this the period originally planned for a delivery, or for the provision of a service, is doubled, or is extended by more than 10 weeks (and whichever is the longer of these two periods shall apply in such a case), the customer shall be entitled to withdraw from that part of the contract which has not yet been fulfilled.

4.4 If the delivery of goods is postponed at the request of the customer, he shall, beginning one month after notification is provided of readiness for dispatch, be charged for the costs that arise in connection with the storage for each month of storage commenced, and if storage takes place at our works, the minimum storage charge shall be a lump sum equal to 0.5% of the invoiced amount. The same shall apply if the customer delays acceptance of goods for longer than one month. The customer is expressly permitted to submit evidence that no damages have been incurred as a result of his delay in acceptance, or that the damages which have been incurred are significantly lower than the lump sum that has become payable. We shall be entitled to set a reasonable period of time for the customer to take delivery of the deliverable item, and if the customer fails to take delivery within this period, we shall further be entitled to dispose of the delivery item in a manner of our choosing, and to make a replacement delivery to the customer within a reasonably extended period of time.

4.5 We are entitled to make partial deliveries, and make partial performance of services, in so far as the customer will not be unduly disadvantaged by this.

### 5. Acceptance and Transfer of Risk

5.1 The risk of being forced to pay in spite of the loss of, or damage to, goods supplied, or work performed, shall be transferred to the customer upon the customer's acceptance of the aforementioned goods or work. If shipment or forwarding takes place, the risk shall be transferred to the customer at the commencement of the dispatch or transport. This shall also apply when free delivery or delivery CIF or FOB has been agreed, or when some arrangement that deviates from these General Business Terms and Conditions is agreed to.

5.2 With regard to deliveries, we shall choose whatever means of transport we deem most suitable, and we shall make this choice with the same care as we would exercise in attending to our own affairs. We are under no obligation to insure our deliveries; however, we are prepared to arrange for the provision of transport insurance at the customer's expense if we receive express written instructions from him to do so.

5.3 Minor defects in the goods and/or services we supply shall not entitle the customer to refuse acceptance.

### 6. Warranty, Claims for Defects, Guarantee

6.1 We warrant that our products are free from manufacturing and material defects, and that assembly and installation work will be correctly performed.

6.2 Customers' warranty claims shall be statute-barred not later than 1 year after the delivery of the goods in question, or after the acceptance of the work performed. Acceptance shall be deemed to have taken place if the customer fails to observe his obligation to confirm acceptance of work performed within a reasonable period of time as specified by us.

If our instructions with regard to the operation, maintenance and/or use of our products are not adhered to, if our products are altered, if parts are replaced, or if consumable materials

are used which do not comply with the original specifications, all warranties shall become null and void.

Sentences 1 to 3 shall apply equally for subsequent deliveries and repairs.

6.3 The customer shall without delay check that each delivery he receives is complete and free from external signs of damage; the customer shall without delay inform the transport company of any items he deems to be missing, or of damage detected, and shall require the transport company / driver to add written confirmation of the customer's findings to the freight forwarder's transfer papers. In addition, we must be notified immediately of all such claims; otherwise we shall be freed from all liability in respect of the claim. The customer shall within 4 days of the delivery of goods, or of the acceptance of work, provide notification in writing of other obvious defects that come to light in the course of an inspection, and shall provide a detailed description of the defects discovered. This deadline shall be deemed to have been complied with if the notification is dispatched in a timely fashion. If the customer neglects to submit the claim in due form and/or in a timely fashion, the goods supplied shall be deemed to have been accepted. Claims in respect of hidden defects, whose discovery could not reasonably have been expected within the aforementioned period of time, must be submitted immediately after they have been discovered, and within the warranty period.

6.4 The full burden of proof lies with the customer for all conditions of entitlement with regard to claims for compensation; in particular, he must furnish proof of the defect itself, of the time of discovery of the defect, and of his having provided notification of the defect in a timely manner.

6.5 If the products delivered do not comply with the warranty given, we may, at our discretion, demand that the customer

- a) convey, at our cost, the defective part or device to us for repair, and subsequent return to the customer;
- b) hold the defective part or device in readiness so that we can carry out the necessary repairs at the customer's premises;
- c) send to us the defective part or device in return for the supply of a part or device that is free from defects.

If the subsequent repair work or replacement delivery fails to remedy the defect after a reasonable period of time, the customer may, at his own discretion, demand either a reduction in the payment due or the annulment of the contract.

6.6 If defects are detected in parts or products not manufactured by us, the customer shall in the first instance be obliged, after the assignment of our claims against the supplier/contractual partner, to pursue remedies against this supplier/contractual partner. If the pursuit of the customer's claim is legally or practically enforceable, the customer shall be entitled to assert his claim against us in so far as this is permissible under the rules set out in this section.

6.7 No warranty shall be provided for parts subject to normal wear and tear, or for damages caused by improper handling or use. The same shall apply for defects that are attributable to the documentation provided by the customer.

6.8 Warranty claims against us may only be asserted by the direct purchaser of our goods and/or services (i.e. by our direct customer), and cannot be assigned.

6.9 The customer shall provide us with the opportunity to inspect the defect that is the subject of the complaint.

6.10 No guarantees shall be provided unless this is expressly specified in writing in the contract, and has been agreed to by us.

### 7. Reservation of Title

7.1 Until the full settlement of all the receivables to which we are entitled either at present or in the future against the customer, and irrespective of their legal basis (including all balance debts on current accounts), the following securities shall be granted to us, which, upon request, and as we see fit, we may release in so far as their value exceeds the value of our receivables by more than 20%.

7.2 The goods shall remain our property. Processing or reforming shall always be performed for us as the manufacturer, though without our incurring any obligation as a consequence of this. If our (co-)ownership is lost through processing and merging with items not belonging to us, it is already hereby agreed that a proportionate share (based on the invoice value) of the customer's (co-)ownership of the composite article shall be transferred to us. The customer shall maintain our (co-)ownership without charge. Goods to which we have rights of (co-)ownership shall be referred to hereinafter as reserved goods.

7.3 The customer has the right to process and to sell on the reserved goods in the ordinary course of business as long as he is not in default. Pledging the goods, or using the goods as security, is not permitted. By way of security, the customer already now assigns to us the receivables (including balances due from a current account) deriving from the reselling of the reserved goods, or from some other legal basis (insurance, tort, etc.). The assignment shall be limited to that proportion of the receivables which corresponds in value to the extent of our co-ownership. We revocably authorize the customer to collect the receivables assigned to us in his own name. The authority to collect shall be awarded exclusively to our direct customer, and can be revoked if the customer does not fulfil his payment obligations in proper fashion.

7.4 In the event of third parties gaining access to the reserved goods, the customer shall point out our ownership, shall inform us without delay of what has happened, and shall help us by all available means to protect our rights. If we incur any loss as a result of third parties gaining access to the reserved goods, the customer shall make good the loss we have suffered, and shall reimburse all the costs we have incurred in connection with the assertion of our rights. The customer undertakes to insure all goods supplied under reservation of ownership against theft and destruction.

7.5 If a customer's behaviour is contrary to the terms of the contract (and in particular in the event of a delay in payment), we shall be entitled, without granting any respite, to reclaim the reserved goods from the customer at the customer's expense, and in connection with the reclaiming of these goods, we shall further be entitled, at our discretion, to demand, or to allow, the disassembly of the goods, to demand their restitution or return, or, if circumstances dictate, to demand the assignment of any handover claims the customer may have against third parties.

7.6 The enforcement of the reservation of title shall not necessarily involve withdrawal from the contract; Section 149, Subsection 2 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) is excluded by agreement. If we demand the restitution of reserved goods, this shall not be understood as a declaration of our intention to withdraw from the contract unless we have expressly stated our intention of doing so.

## **9. Payment Terms, Default in Payment, Payment Set-Offs, Direct Debits**

8.1 When we issue an invoice, payment shall be made to the account we have specified within 30 days of the invoice date, with no deductions. Persons in our employ shall only be entitled to accept payments, including payments in the form of cheques, if we have given them express written authority to do so.

8.2 We are entitled, notwithstanding any terms and conditions put forward by the customer to the contrary, to offset newer payments received from the customer against his older outstanding debts. If costs and interest have already accrued, we shall be entitled to offset incoming payments first against cost, then against interest, and lastly against the main debt.

8.3 Cheques shall be accepted as a means of payment, but shall count as actual payment only when they have been cleared; no obligation on our part to accept cheques can be inferred from this. Payment shall only be deemed to have been effected when the amount in question is fully at our disposal, i.e. on the day when a cheque has been successfully cashed, or on the day when the amount is irrevocably credited to our account. The acceptance of cheques shall not constitute any obligation on our part in with the cashing in or collection of cheques shall be borne by the customer.

8.4 If the customer falls into arrears with his payments, the customer shall pay a rate of interest on the amount(s) owed that is 9 percentage points higher than the base interest rate. In addition, we shall be entitled to demand payment of a fixed fee of EUR 40.00. This fixed fee shall be charged in addition to the compensation for damages that becomes payable in so far as the damages have been incurred in connection with the cost of pursuing a legal remedy (Section 288 of the German Civil Code – Bürgerliches Gesetzbuch (BGB)). We reserve the right to prove that higher damages have arisen as a result of late payment, and to claim for these damages.

8.5 If the customer does not meet his payment obligations, or if we become aware of other circumstances which call into question the customer's creditworthiness, we shall be entitled to declare that the outstanding debt is immediately payable in its entirety, even if in the past we have accepted cheques. In such a case, we shall further be entitled to demand advance payment or security, and to refuse to meet our obligations until such payment has been made, or such security has been provided. If our demand for advance payment, or for the provision of security, is not met within whatever reasonable period of time we have set, we shall be entitled to withdraw from the contract and/or to demand damages for non-performance. If the customer discontinues payment, or becomes over-indebted, no grace period shall be granted.

8.6 The customer shall be entitled to offset invoice amounts, or to withhold or reduce payment, only if his counterclaims have been legally established, or if we have acknowledged in a written declaration that they are valid.

8.7 The following shall apply if it has been agreed that a payment is to be made by means of a SEPA Direct Debit, and the customer has issued a corresponding SEPA Direct Debit Mandate:

When temp-rite issues its invoice, it shall also, as a rule, provide pre-notification of the pending direct debit not later than one calendar day before the due date for the direct-debit payment. temp-rite reserves the right to decide whether the pre-notification be sent/transmitted by letter, telefax or e-mail. In individual cases, the amount collected from the customer may differ in the customer's favour from the amount specified in the pre-notification if the customer has received credit notes and/or has cancelled the delivery of individual goods, or the provision of individual services, in the period between the issuing of pre-notification and the due date.

The customer undertakes to ensure that there are sufficient funds in the account to which has the SEPA Direct-Debit Mandate applies. All costs arising from the non-payment, or the reversal, of a direct debit shall be borne by the customer in so far as he is responsible for these costs.

## **9. Design Changes**

We reserve the right to make design changes at any time; however, we are under no obligation to make changes to products that have already been supplied to ensure that they comply with newer designs.

## **10. Documents, Samples, Consultation**

10.1 The documents and samples that have been made available to the customer remain our property, and must be treated confidentially. They may not be reproduced, or published, or made available to third parties in any other way, without our written consent. These documents and samples must be returned to us without delay at our request.

10.2 The contents of our documents shall only become a constituent part of the contract if an express agreement to this effect is concluded. The samples we provide, and the illustrations and data contained in our documents, are subject to change at any time. They shall not of themselves be considered warranties for the properties of our products.

10.3 Any general information and advice made available to the customer shall be provided on a non-binding basis, and shall not constitute grounds for liability.

## **11. Limitation of Liability**

11.1 Our liability, on whatever legal ground, is restricted to cases of wilful intent and gross negligence. This shall not apply in cases of loss of life, physical injury or impairment of health, or in cases of culpable breach of major contractual obligations, or in claims for compensation on account of a delay in performance, or in cases of liability under the terms of the German Product Liability Act (in all of which cases we shall be liable for all degrees of culpability).

11.2 Any claim for compensation on account of the violation of essential contractual obligations shall, however, be limited to contractually typical, foreseeable damage. Even in cases of gross negligence, our liability shall be limited to contractually typical, foreseeable

damage unless the liability is incurred on account of loss of life, physical injury or impairment of health, or under the terms of the German Product Liability Act.

11.3 Liability for damage to the legal assets of the customer that has been caused by the item delivered, e.g. damage to other goods, is, however, entirely excluded. This shall not apply in cases of wilful intent or gross negligence, or if liability is incurred on account of loss of life, physical injury or impairment of health.

11.4 The provisions of 11.1 to 11.3 cover compensation for damage along with performance, and compensation for damage instead of performance, regardless of the legal reason, and, in particular, compensation for defects, and for the breach of obligations arising out of the contractual relationship, or arising through the commission of a wrongful act. They shall also apply to claims for the reimbursement of fruitless expenses. Liability for delay, however, shall be as defined at 11.5, and liability for impossibility as defined at 11.6.

11.5 In cases of wilful intent or gross negligence, we shall be liable in accordance with the statutory provisions for delays in the delivery of goods or the provision of services. However in cases of gross negligence, our liability shall be limited to contractually typical, foreseeable damage unless we become liable on account of loss of life, physical injury or impairment of health. In all other cases of delay in the making of deliveries, or in the provision of services, our liability to provide compensation for damage besides performance, or to provide compensation for damage instead of performance, shall be limited to the contract sum (not including VAT). Any further claims asserted by the customer, including claims asserted after the elapse of a deadline we have set for the delivery of goods or the provision of a service, shall be excluded. The above-mentioned limitations shall not apply when liability is incurred on account of loss of life, physical injury or impairment of health.

11.6 We shall be liable to the extent prescribed in law in cases where wilful intent or gross negligence has rendered the delivery of goods, or the provision of a service, impossible. However, in cases of gross negligence, our liability shall be limited to contractually typical, foreseeable damage unless we become liable on account of loss of life, physical injury or impairment of health. In all other cases, our liability to pay compensation for damages on account of the impossibility of performance, or for the reimbursement of fruitless expenses, shall be limited to the contract sum (not including VAT). Any further claims asserted by the customer on account of the impossibility of delivery shall be excluded. The above-mentioned limitations shall not apply when liability is incurred on account of loss of life, physical injury or impairment of health. The customer's right of withdrawal shall remain unaffected.

11.7 To the extent that liability for damages caused by minor negligence (and not involving any loss of life, physical injury or impairment of health) is not excluded, any claims based on such liability shall become statute-barred within one year, commencing with the date on which the claim arose, or, in the case of claims for compensation on account of a defect, one year after the handover of the goods/works.

11.8 The above-mentioned exclusions and limitations of liabilities shall also apply for our staff members, representatives and vicarious agents.

## **12. Insurance**

If the customer hands over to us devices and equipment which are his property for repair, these devices and equipment shall be covered by our insurance for the duration of the repair work and of their stay in our storage facilities.

## **13. Export**

The export of products supplied by us from the territory of the Federal Republic of Germany is only permissible with our express written consent. If the products have been supplied to a destination outside Germany, the above-mentioned provision shall apply accordingly in the case of the onward export of these products from the national territory into which we supplied them.

## **14. Applicable Law, Place of Performance, Partial Invalidity**

14.1 The law of the Federal Republic of Germany shall apply exclusively to the business relationship and the entire framework of legal relationships between us and the customer. The application of the Uniform Law on the International Sale of Goods and of the Law on the Conclusion of International Contracts for the Sale of Goods is excluded. In addition to the above-mentioned provisions, the "International Rules for the Interpretation of Customary Commercial Contractual Terms" (ICC Incoterms) shall apply in their latest versions to all business transacted with foreign contracting parties.

14.2 The exclusive place of performance for delivery and payment shall be 28307 Bremen.

14.3 If one or several of the provisions of these General Business Terms and Conditions, or in any other agreement between us and the customer, should be or become invalid, this shall not affect the validity of any of the other provisions or agreements. In such a case, those provisions which most closely approximate the commercial purpose of the invalid provisions should, by way of reinterpretation, be applied in place of them. If, for legal reasons, such a reinterpretation is not feasible, the parties shall undertake to draw up supplementary provisions whose purpose shall be in accordance with the sense of the preceding sentence. The above-described provision shall apply analogously if an interpretative examination reveals that supplementary provisions are required to eliminate lacunae that have been found to exist in the contract underlying these Business Terms and Conditions.

## **15. Legal Venue**

Bremen/Germany is the exclusive place of jurisdiction for all disputes with so-called fully qualified merchants (*Vollkaufleute*) in so far as these disputes have arisen directly or indirectly from the contractual relationship. However, we are entitled to take legal action against the customer at his general legal venue.

### **Note on the English version of these General Business Terms and Conditions**

In the event of discrepancies between the English version and the German version of these General Business Terms and Conditions, the German version shall take precedence.

# temp-rite

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