

TERMS AND CONDITIONS OF SALES (EMEA)

Tempo Communications, Inc. is hereinafter referred to either as “Tempo” or “Seller” and the Customer or person or entity Purchasing is hereinafter referred to as the “Buyer”, and the goods or services hereinafter collectively referred to as the “Goods”. These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Tempo relevant to the sale of the Goods and all documents incorporated by specific reference therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by Tempo to Buyer. Buyer’s acceptance of the Goods will manifest Buyer’s assent to these terms and conditions without variation or addition. Any different or additional terms in Buyer’s purchase order or other Buyer documents are hereby objected to. Tempo reserves the right in its sole discretion to refuse orders.

1. PRICES AND TAXES:

Unless a fixed price is quoted, the price at which this order is accepted is subject to adjustment to Tempo’s price in effect at the time of order. Any current or future tax or governmental charge (or increase in same) affecting Seller’s costs or production, sale or delivery or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods (but excluding any tax on Seller’s net income or profit) shall be for Buyer’s account and shall be added to the price..

Prices are per package quantity, regardless of Standard Pack Quantity. We reserve the right to invoice at prices in effect at time of shipment.

A minimum order value of £250 / €300 / \$400 will be applied for all purchase orders, excluding service and/or repair parts ordered, with shipping paid by the Buyer plus a \$25 small order fee. For UK customers there is a minimum order value of £1,000 below which freight is paid by the Buyer.

2. TERMS OF PAYMENT

Terms are stated on Tempo’s invoice in USD, GBP or Euro as defined on the Buyer’s account. Tempo shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with the Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly, or Tempo otherwise deems itself insecure. Buyer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts. Should Buyer’s financial responsibility become unsatisfactory to Tempo, cash payments or security satisfactory to Tempo may be required by Tempo for future deliveries and for the goods theretofore delivered. If such cash payment or security is not provided, in addition to Tempo’s other rights and remedies, Tempo may discontinue deliveries.

3. SHIPMENT AND DELIVERY

Unless otherwise expressly provided, shipments are made EXW Tempo’s shipping point. Risk of loss or damage and responsibility shall pass from Tempo to Buyer at Tempo’s dock. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by the Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While Tempo will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Tempo, all shipping dates are approximate and not guaranteed. Tempo reserves the right to make partial shipments. Tempo, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Tempo for any and all handling and storage costs and other additional expenses resulting therefrom. All claims for shipping errors, lost shipments or any other discrepancies must be made within ninety (90) days or they will be disallowed and deemed waived.

Shipping details:

- EXW from Tempo’s facility in Vista, CA for shipments from the US
- EXW from Tempo’s facility in Heijzen, NL for shipments from the EU
- Any ancillary (surcharge) shipment fees directly related to consignee and/or destination location will be invoiced.
- A 15% restocking fee will be charged for return products.
- We reserve the right to apply a fuel surcharge. We are unable to comply with ADD TO or SHIP WITH OTHER GOODS requests. Special packing, markings, or export packaging is available at an additional charge and quoted by request.
- International Distributors – Terms of Sale are EXW from Tempo’s facility origins unless otherwise agreed to in writing by Tempo’s International Sales Department.

4. TEMPO WARRANTY:

Tempo covers its products with a manufacturer's warranty against defects in material or workmanship for a period of one year unless otherwise established by Tempo in writing. To take advantage of this warranty, the complete product must be delivered prepaid to Tempo or any Tempo Authorized Service Center. This warranty shall not apply to any Goods including but not limited to products which: (a) Have been repaired or altered outside Tempo's factory (or Authorized Service Center) or in any manner so as, in Tempo's judgment, to affect its serviceability or proper operation, (b) Have been subjected by persons other than Tempo (or Authorized Service Center) to improper handling, operation, maintenance, repair or alteration, or (c) Have been subjected to normal wear and tear, misuse, negligence, improper installation or accident. Tempo's obligation under this warranty, and the Buyer's exclusive remedy for the breach thereof, shall be limited to, at Tempo's option, repair or replacement of any allegedly defective Goods or issuance of credit. Tempo requires the return of any allegedly defective Goods, transportation prepaid, before honoring any claim. All returned Goods are subject to inspection, and if examination does not disclose any defect covered by this warranty, replacement of such Goods or issuance of credit for same will not be approved. THE FOREGOING CONSTITUTES TEMPO'S SOLE WARRANTY RESPONSIBILITY AND BUYER'S EXCLUSIVE REMEDY WHETHER SOUNDING IN TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. No employee, agent, dealer, or other person is authorized to give any warranty on behalf of Tempo. This warranty extends only to persons or organizations who purchase the Goods from Tempo for resale.

- Out of box defects must be reported to Tempo's Customer Service department
- Warranty period begins within 30 days of delivery to the distributor or within 14 days of the proof of purchase date on the end customer's receipt, sales ticket or invoice.
- Any return of goods must be approved through the assignment of a Return Material Request (RMR) number. Submit requests to emeaservice@tempocom.com. The claim is to be submitted only by the company who purchased from Tempo.
- If available, please return product in original packaging.
- Credit will be processed when defective material is received and is determined by Tempo to be defective and/or unused.
- Contact information for Service & Repair and Returns: emeaservice@tempocom.com, + 44 (0) 1633 927050

5. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION, REPLACEMENT OR CREDIT UNDER SECTION 4. TEMPO SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE, AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL TEMPO'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, AND BUYER SHALL INDEMNIFY TEMPO FOR ANY DAMAGES IN EXCESS THEREOF. BUYER AGREES THAT IN NO EVENT SHALL TEMPO'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS INCLUDE SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER IN CONNECTION WITH THE SALE, RESALE OR USE OF THE GOODS, WHICH ARE WAIVED BY BUYER AND AS TO WHICH BUYER SHALL INDEMNIFY TEMPO. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use of revenue, cost of capital or loss of or damage to property, equipment, or data, or loss of reputation. Further, Buyer shall indemnify and hold Tempo harmless from any liability to Buyer, Buyer's employees, workers, contractors or any other persons arising out of Buyer's, and any other persons', use of the Goods. All instructions and warnings supplied by Tempo will be passed on to those persons who use the Goods. Tempo's Goods are to be used in their recommended applications and all warning labels adhered to the Goods by Tempo shall be left intact.

Tempo has elected not to make available the informal dispute settlement mechanism which is specified in the Magnuson-Moss Warranty Act.

6. Limited Warranty Returns:

To obtain repair or replacement under this limited warranty, the buyer must contact Tempo Customer Service at +44 (0) 1633 927050 (or email at emeaservice@tempocom.com) to obtain authorization to return the product, transportation prepaid to the Tempo Factory Service Center, along with a copy of the original purchase invoice for warranty evaluation and repair or replacement. Items received at the Tempo Factory Service Center without prior authorization will be returned freight collect. Alternately, the buyer may return the product with a copy of the original purchase invoice to an Authorized Tempo Regional Warranty Center, transportation prepaid. A list of Authorized Tempo Regional Warranty Centers may be found by contacting Tempo Customer Service at +44 (0) 1633 927050.

For all Tempo Test Instrument repairs, a Return Material Request number (RMR) will need to be obtained by filling out the RMR request form and submitting the completed form to Customer Service. The RMR request form can be found at <http://www.tempocom.com/product-repairs>. Once the completed form is received, an RMA number and shipping instructions will be provided. Average turn around for an RMR number to be issued is 24 hours. Items received without prior authorization and RMR number on the shipping label will be returned freight collect. For items not covered under warranty (such as items dropped, abused, etc.), a repair cost quote is available upon request.

Note: Prior to returning any test instrument, please check replaceable batteries or make sure the battery is at full charge. Tempo can provide calibration service for specifically marked test equipment. A certificate will be provided.

7. EXCUSE OF PERFORMANCE (FORCEMAJEURE):

Tempo shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; flood; weather; sabotage; strikes, labor disputes, civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or events beyond Tempo's reasonable control. Deliveries or other performance may be suspended for an appropriate period or cancelled by Tempo upon notice to Buyer in the event of any of the foregoing, but the balance of this agreement shall otherwise remain unaffected. If Tempo determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth herein, Tempo may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or materials) among itself and its buyers on such basis as Tempo determines to be equitable without liability for any failure of performance which may result therefrom.

8. CHANGES:

Tempo reserves the right to change designs and specifications for standard Goods without prior notice to Buyer, but not with respect to custom Goods being made for Buyer. Tempo shall have no obligation to install or make such change in any Goods manufactured prior to the date of such change.

9. ASSIGNMENT:

Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Tempo, and any such assignment, without such consent, shall be void.

10. INSPECTION/TESTING:

Buyer, at its expense, agrees that it will promptly inspect the Goods upon receipt thereof, and in no event later than thirty (30) days from the date of receipt of the Goods. Buyer shall deliver to Tempo within fifteen (15) days of inspection, but in no event later than forty-five (45) days from the date of receipt of the Goods, written notice of any and all deficiencies, defects, variations from specifications or complaints of any kind with respect to the quantity, quality, condition, shipment, performance, price or appearance of the Goods so received by Buyer. In the event no such written notice is received by Tempo, Buyer shall be deemed conclusively to have inspected and accepted all such Goods unconditionally and to have waived any and all rights and claims, including without limitation any right to reject the Goods or to claim damages in respect thereof. Buyer may not return goods without first advising Tempo of the reasons therefore, obtaining from Tempo a material authorization number and observing such instructions as Tempo may give in authorizing such return. In the event a return is authorized by Tempo, a fifteen percent (15%) restocking fee for any Goods shall be deducted from the final credit amount.

11. SERVICES:

If this agreement requires Tempo to perform or provide any services, Tempo (including without limitation its successors, assigns, agents or any person or entity acting at Tempo's direction) shall not be responsible for any damages, claims, liabilities or expenses of any nature arising out of such services.

12. U.S. EXPORT CONTROLLAWS:

All Goods sold to Buyer by Tempo hereunder are subject to U.S. Export Control Laws. Buyer hereby agrees not to re-sell or divert any goods contrary to such laws.

13. COMPLIANCE:

Seller as well as Buyer shall comply with all applicable federal, state or local laws, rules, regulations, or orders including but not limited to the

Foreign Corrupt Practices Act of 1977, as amended. Tempo reserves the right to delay or refuse delivery if requests for reasonable assurances of Buyer's compliance are not tendered as requested. Seller is a supplier of commercial items and commercial components within the meaning of FAR 2.101 and, as such, Seller objects to the inclusion of any Federal Acquisition Regulation (FAR) provision or clause in any contract entered into under the terms of this Agreement, except the following: 52.222-26, Equal Opportunity (E.O. 11246); 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212[a]); and 52.222-36 Affirmative Action for Handicapped Workers (29 U.S.C. 793).

14. Global Anti-Corruption Compliance Policy

Buyer acknowledges that neither buyer nor any of its officers, employees or representatives have been paid, offered to pay or promised to pay, or authorized the payment of, directly or indirectly through any other person or firm, anything of value (in the form of compensation, gift, contribution or otherwise) to any person or entity employed by or acting for or on behalf of any customer, whether private or governmental, for the purpose of inducing, influencing or rewarding any favorable action by the customer in connection with this transaction. Any violation of this provision by buyer may lead to the termination of the purchase order for this transaction in whole or in part and any future purchase orders.

15. MISCELLANEOUS:

These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter hereof. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon Tempo unless made in writing and signed on its behalf by its duly authorized representative. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by Seller. No modification shall be affected by Tempo's receipt or acceptance of Buyer's purchase orders, shipping instruction forms, of other documentation containing terms at variance with or in addition to those set forth herein, all of which are objected to by Tempo. Any such modifications or additional terms are specifically rejected by Tempo. No waiver by Tempo with respect to any breach or default of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default of any other right or remedy, unless such waiver be expressed in writing and signed by Tempo. All typographical or clerical errors made by Tempo in any quotation, acknowledgment or publication are subject to correction. Validity and performance relating to the interpretation and effect of this agreement shall be governed by the laws of the state of Texas without regard to its conflict of law principles.

16. DISPUTE RESOLUTION: No action or proceeding may be maintained by Buyer against Tempo except either in a state or federal court in or for Travis County, Texas. Buyer hereby irrevocably waives any right to commence any action or proceeding against Tempo in any other court or tribunal. Buyer further submits to the personal jurisdiction of the aforementioned courts with respect to any claims brought by Tempo in connection with any order or other matter subject to these terms and conditions. Buyer irrevocably waives any right to trial by jury in any such proceeding. Buyer further waives any rights or defenses it may have under the laws of any country, state or other jurisdiction to commencement or continuation of any action in the aforementioned courts based on lack of personal jurisdiction or improper or inconvenient venue. All judgments and orders issued by the aforementioned courts against Buyer in favor of Tempo may be enforced by any court in any jurisdiction in which Buyer or any of its assets is located. The laws of the State of Texas (without giving effect to its conflicts of law principles) govern all matters arising under and relating to these terms and conditions, whether based in contract, tort or other legal theory.

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