

1. Scope

1.1 These general terms and conditions ("T&Cs") shall apply to all sales of goods from Temposonics GmbH & Co. KG ("Temposonics") to entrepreneurs, legal entities under public law or special funds under public law ("Customers").

These Terms and Conditions, as amended from time to time, shall also apply as a framework agreement to future sales of goods from Temposonics to the same Customer without having to be referred to again.

1.2 These Terms and Conditions apply to the exclusion of other general terms and conditions.

Conflicting or supplementary general terms and conditions of the Customer do not apply, unless Temposonics has given its express written consent.

In particular, this consent requirement also applies if Temposonics, whilst aware of the Customer's general terms and conditions, fulfills orders without reservation.

1.3 If individually agreed contracts are entered into with the Customer on a case-by-case basis (including side agreements, additions and amendments), such individually agreed to contracts will take precedence over these Terms and Conditions. The content of an individually agreed to contract will be derived from its written record or, as applicable, Temposonics' written confirmation.

1.4 References to applicable statutory provisions are included for clarification purposes only. Even without such clarification the statutory provisions will apply, insofar as they have not been directly amended or expressly excluded by these Terms and Conditions.

2. Quotations and Conclusion of Contract

2.1 Invitations to treat / quotations issued by Temposonics are made without obligation and are non-binding.

The Customer's placing of an order of goods shall be regarded as a binding contract offer.

2.2 Unless the order provides otherwise, Temposonics is entitled to accept the Customer's contract offer within four (4) weeks of receipt.

2.3 Acceptance can either be declared expressly by way of confirmation of order or by implication by way of delivery of the goods to the Customer.

2.4 If the goods are to be used for specific purposes, this specific function and the requirements to which the goods must adhere must be agreed to in writing by Temposonics and the Customer.

2.5 Temposonics is not required to check details and / or specifications provided by the Customer for correctness and / or legal compliance; the liability for such details lies solely with the Customer. This particularly applies to liability for possible breaches of intellectual property rights.

This limitation of liability is subject to the provisions of section 9.3

3. Intellectual Property

3.1 The Customer warrants that by Temposonics executing the purchase order, no intellectual property rights are breached by any products, drawings or samples provided by the Customer or third parties, and that the Customer will either (a) administer any defence proceedings at its own cost, or (b) allow Temposonics to administer any defence proceedings while reimbursing Temposonics for any and all related costs.

3.2 Temposonics retains all rights of ownership and copyright in all quotations and other documents submitted by Temposonics.

The Customer must not make available to third parties, publish, use or copy or allow others to use or copy these materials or their content without Temposonics' prior express written approval.

If no longer required by the Customer within the ordinary course of business, or if negotiations did not lead to the conclusion of a contract between Customer and Temposonics, on Temposonics' request, the Customer must return to Temposonics all such materials, destroy any copies made and certify to Temposonics in writing such return and destruction, as applicable.

4. Delivery time

4.1 The delivery period will be agreed individually as between the parties or set out in the purchase order confirmation.

4.2 The commencement of a delay in de-livery is determined in line with statutory requirements.

In any event, a reminder from the Customer will be required.

4.3 If binding delivery dates cannot be met for reasons for which Temposonics is not responsible (impossibility of performance), Temposonics shall promptly notify the Customer of such circumstances and advise the Customer of the expected new delivery time.

Impossibility of performance shall particularly apply if Temposonics has entered into a corresponding supply agreement with its own supplier (*kongruentes Deckungsgeschäft*) and such supplier does not deliver on time.

Should performance not be possible for a period of more than two (2) months, Temposonics shall be entitled to withdraw from the agreement (*vom Vertrag zurücktreten*) in return for immediate reimbursement of any consideration already provided by the Customer.

Statutory rights of withdrawal (*Rücktrittsrechte*) of Temposonics or the Customer remain unaffected, particularly such rights based on impossibility or unreasonableness of performance.

4.4 Temposonics will only be entitled to make partial deliveries if

- a) the part-delivery can be used by the Customer within the scope of the intended purpose under the contract,
- b) the delivery of the remaining goods is ensured and
- c) no extra efforts or additional costs need to be incurred by the Customer (unless Temposonics agrees to take over such costs).

5. Delivery, Passing of Risk, Shipping, Acceptance

5.1 Within Germany sold goods are delivered carriage paid to (CPT), according to the Incoterms 2020.

5.2 Within the European Union (EU) sold goods are delivered according to the specifications in the order confirmation.

5.3 Outside of the EU sold goods are delivered according to conditions of the Incoterms 2020 specified in the order confirmation.

5.4 The risk of accidental destruction and accidental deterioration shall pass to the customer upon delivery of the goods to the freight forwarder, carrier or other person or institution designated to carry out the shipment.

This also applies if Temposonics has taken over other obligations (e.g. transport (see section 5.3) or installation).

6. Prices, Payment

6.1 In the absence of any agreement to the contrary, Temposonics' standard prices current at the time the respective contract is entered into apply, ex warehouse plus VAT.

6.2 In the event of a sales shipment (see section 5.3), the Customer bears the costs of transportation involved in accepting delivery of the goods ex warehouse, the costs of transport insurance (if requested) and any other ancillary costs such as customs duties, fees, taxes and other public charges.

6.3 Unless mutually agreed otherwise in writing, the purchase price is due and payable within 30 days from the date of the invoice and delivery of the goods.

On expiry of this payment deadline, the Customer will be in default of payment.

6.4 The Customer shall only be entitled to rights of set-off and retention if the Customer's counterclaim (i) has been finally recognised by judgment without the possibility of further legal recourse or (ii) is undisputed.

7. Retention of Title

7.1 Temposonics shall retain ownership in the goods supplied ("**Secured Goods**") until full payment of all current and future claims arising under the contract and from the business relationship with the Customer ("**Secured Claims**").

If Secured Claims are included in a current account, the retention of title shall attach to and safeguard the final outstanding and agreed balance.

7.2 The Customer shall store the Secured Goods with the care of a prudent businessman.

7.3 The Customer is permitted to process and/or resell the Secured Goods in the ordinary course of business, subject to the following provisions:

- a) The retention of title applies also to products which are created by processing, mixing or combining the Secured Goods ("**Products**"), where Temposonics is considered the manufacturer. If the Secured Goods are processed, mixed or combined with goods of third parties, the retention of title applies to such Products proportional to the invoice value of the Secured Goods.

- b) The Customer already herewith assigns to Temposonics by way of security all receivables resulting from the resale of the Secured Goods and Products or, as applicable, all receivables resulting from the resale of the Secured Goods and Products in the amount of the possible co-ownership interest arising under section 7.3.a) 2nd sentence above ("**Assigned Claims**").
The Customer is authorised to collect payment of the Assigned Claims.
- The above-mentioned authorisation to process and/or re-sell the Secured Goods and/or to accept payment of Assigned Claims can be revoked by Temposonics if the Customer is in default of payment.
If the right to process and/or re-sell the Secured Goods and/or to accept payment of Assigned Claims is revoked, the Customer shall provide Temposonics with all such information necessary to make use of the Secured Goods, Products and/or Assigned Claims ("**Securities**"), to provide the relevant documents and to notify the Customer's debtors of the transfer to Temposonics of the Assigned Claims.
- 7.4 Securities must neither be pledged to third parties nor be assigned or surrendered to third parties by way of security prior to full payment of the Secured Claims or prior to the respective Securities having been released.
The Customer must notify Temposonics immediately of any interference by third parties with the Securities.
- 7.5 If the realisable value of the Securities exceeds the value of the Secured Claims by more than 10%, Temposonics will at its own discretion release Securities upon the Customer's request.
- 8. Warranty**
- 8.1 The enforcement of warranty claims (*Mängelansprüche*) is subject to the Customer having performed its statutory inspection and notification obligations.
Notice in respect of visible defects must be given promptly following delivery, notice in respect of hidden defects must be given promptly following discovery.
Notifications of defects must be made in writing.
- 8.2 If at the time risk passes there is a defect in the goods acquired, Temposonics is permitted at its discretion to cure the defect by way of repair or replacement.
Without prejudice to any rights to claims for damages, the Customer is entitled within the framework of the statutory provisions to withdraw from the agreement (*vom Vertrag zurücktreten*) or reduce the purchase price if
- a) the cure (*Nacherfüllung*) is not provided within a reasonable time frame;
- b) the cure is refused by Temposonics;
- c) the cure fails;
- d) the cure would be unreasonable for the Customer or
- e) the cure is dispensable for other reasons under statute.
- 8.3 Warranty claims of the Customer become time-barred within 12 months from delivery.
The aforementioned restriction on the statute of limitation does not apply in the following events:
- a) Liability by Temposonics for damage from injury to life, body or health;
- b) Liability by Temposonics for other damage arising from an intentional (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) breach of duty;
- c) Warranty claims of the Customer in connection with building-related performances (*bauwerksbezogene Leistungen*) (sections 438 (1) no. 2 and 634a (1) no. 2 German Civil Code);
- d) Warranty claims of the Customer due to real rights (*dingliche Rechte*) of third parties on the basis of which return of the purchased goods can be requested (section 438 (1) no. 1 German Civil Code);
- e) Warranty claims of the Customer if defects in the purchased goods have been concealed fraudulently (*arglistig*) (section 438 (3) German Civil Code);
- f) Warranty claims of the Customer within the framework of the rules on recourse of the entrepreneur following the sale of the goods to a consumer (sections 478, 479 German Civil Code) or
- g) Liability by Temposonics under the German Product Liability Act.
- 9. Liability**
- 9.1 Liability by Temposonics and its vicarious agents (*Erfüllungsgehilfen*) for slightly negligent (*leicht fahrlässig*) breaches of non-material contractual obligations (*nicht vertragswesentliche Pflichten*) is excluded.
Liability by Temposonics and its vicarious agents for slightly negligent breaches of material contractual obligations is limited to the damage typically foreseeable under the contract.
Material contractual obligations shall be all such obligations the fulfilment of which is essential for the proper performance of the contract in the first place and the fulfilment of which the contractual partner may regularly relies on.
- 9.2 The statute of limitations for claims by the Customer for damages for defects in the purchased goods is governed by section 8.3 above.
The statute of limitations for other claims for damages by the Customer is governed by statute.
- 9.3 The aforementioned exclusions and limitations of liability do not apply in the following events:
- a) Liability by Temposonics for damage from injury to life, body or health;
- b) Liability by Temposonics for other damage arising from an intentional (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) breach of duty;
- c) Liability by Temposonics if defects have been concealed fraudulently (*arglistig verschwiegen*) or if a quality guarantee (*Beschaffenheitsgarantie*) has been breached or
- d) Liability by Temposonics under the German Product Liability Act.
- The same applies to the limitation of liability contained in section 2.5 above and 11.3 below.
- 10. Temposonics Software License Agreement**
- 10.1 All Software or documentation offered for sale or lease is an offer to grant a license to Customer and subject to Temposonics' End User Software License Agreement available upon request and located at: <http://www.temposonics.com/>.
- 11. Site Preparation and Condition for Services**
- 11.1 Temposonics may provide services and performances to the Customer as expressly defined in a related scope of work ("**Service**").
- 11.2 If applicable, prior to the date specified in the quotation or statement of work for the performance of Service, Customer will (a) obtain and pay for all governmental or third party consents, permits, approvals, licenses and public and private easements necessary for performance of the Services and delivery of the Product, and (b) notify Temposonics in advance of any requirements including all local laws, regulations and/or ordinances to which Temposonics is or will be required to comply in the rendering of Services and in the supplying of Product hereunder. Customer shall be solely responsible for preparation of the site, at which Temposonics will perform the Services, to the specifications and in accordance with the time schedule stated in the quotation or statement of work. Customer warrants to Temposonics that each such site is in compliance with all applicable health and safety regulations and is free from all asbestos and hazardous contamination or pollutants.
- 11.3 Section 8 (Warranty) and Section 9 (Liability) apply to Services performed by Temposonics accordingly.
- 12. Choice of Law / Place of Jurisdiction / Language**
- 12.1 The laws of the Federal Republic of Germany apply, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.2 The courts at the seat of Temposonics have exclusive jurisdiction (as courts of first instance).
Temposonics is also entitled to issue proceedings at the Customer's general place of jurisdiction.
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