

STATIC TEMPERING – GENERAL SALES CONDITIONS INDUSTRY

DEFINITIONS

■ « PRODUCT(S) »: refers to all the devices sold by the company STATIC TEMPERING designed specifically to mechanize the production of chocolate. The term « Product(s) » also refers to all the devices designed, developed and manufactured by STATIC TEMPERING to meet special orders placed by the Buyer.

■ « PROVISION OF SERVICES »: refers to all the services provided by the company STATIC TEMPERING including analysis, design and development of measuring devices as well as the calibration and installation of the Products.

■ « BUYERS »: refers to all the manufacturers specialised in the production of chocolate to be sold on to professional customers.

1. AREA COVERED and FORMATION OF THE CONTRACT

In accordance with article L 441-6 of the French Trade Code (Code du commerce), these General Sales Conditions set out the basis of the sales relations between the parties. They shall apply, without any restrictions or reserves, to all the sales agreed upon between STATIC TEMPERING and Buyers of the same category, regardless of the clauses which may appear on the Buyer's own documents concerning, notably, their general buying conditions. These General Sales Conditions govern all contracts (hereafter designated contract(s) or order(s) between the Parties), unless special conditions, riders or modifications are made to these General Sales Conditions by express, written agreement between the parties in the event of a special order. In accordance with current regulations, these General Sales Conditions shall be automatically communicated, on request, to any Buyer in order to enable them to place orders with STATIC TEMPERING. Placing an order for Products and Services implies that the Buyer agrees to accept and abide by these General Sales Conditions.

Information printed in STATIC TEMPERING catalogues, prospectus and price lists are merely indicative and are liable to be modified at any moment. STATIC TEMPERING reserves the right to modify these whenever it is deemed necessary.

Orders must be placed in writing by means of an order form duly signed by the Buyer. The Buyer's order must be expressly accepted, in writing, by STATIC TEMPERING for it to be deemed firm. No cancellations, even partial, may be made without the express permission of STATIC TEMPERING. In the event of cancellation, the latter reserves the right to claim for damages in addition to the payment for all goods already shipped and all work already carried out. In the event of a unilateral and therefore unauthorized cancellation by the Buyer, whether total or partial, the latter is liable to compensate STATIC TEMPERING for any expenses incurred. Furthermore, any down payment already received by STATIC TEMPERING concerning a cancelled order will be retained and will under no circumstances be refunded to the Buyer.

Unless otherwise clearly stated in the offer by STATIC TEMPERING, offers are firm and irrevocable for a period of 1 month starting from the date of issue. After this period the offer is no longer legally binding, unless expressly agreed to by STATIC TEMPERING, in writing.

2. OBJECT OF SERVICES PROVIDED / NATURE OF THE RELATIONS

Buyers can instruct STATIC TEMPERING to carry out different missions related to research and analysis, designing methods of manufacturing and organizing mechanization processes according to the Buyer's specifications. When carrying out research and analysis, STATIC TEMPERING has a best endeavour obligation but cannot guarantee the results. For other missions, the Parties will come to a common agreement on the extent of STATIC TEMPERING's obligations. Unless stated otherwise, STATIC TEMPERING has a best endeavour obligation but cannot guarantee the results. Conditions governing the sale of the products will only apply after the design and mechanization phases when the Buyer actually decides to place orders.

Consequently, the Buyer is bound to state fully and clearly its requirements. The Buyer is solely responsible for the quality and accuracy of the ideas, concepts, industrial property rights, drawings, specification sheets, projects, models and samples which it supplies to STATIC TEMPERING. Within the framework of the contract, notwithstanding its legal responsibility as regards third parties or an act of gross negligence, STATIC TEMPERING cannot be held liable for the above, as they are solely the responsibility of the Buyer.

STATIC TEMPERING provides its know-how and technical knowledge. Given the nature of the relations between the parties, STATIC TEMPERING reserves the right to refuse any demands for exclusive rights agreements or for them to refrain from working with competitors. Provided that it respects industrial or intellectual property rights belonging to the Buyer, STATIC TEMPERING will be entitled to make use of its know-how and technical knowledge when working with the Buyer's competitors.

3. PRICES OF PRODUCTS AND PROVISION OF SERVICES – PAYMENT TERMS AND DELAYS

Unless otherwise stipulated, the prices of products and services shall be invoiced at the current rate in effect when an order is placed. Any additional work, not initially planned, for will be invoiced separately.

A down payment of 50% of the total pre-tax price is payable when placing the order. The whole balance must be paid at delivery within 30 days end of month following the issuing of the invoice.

STATIC TEMPERING are entitled to withhold delivery of the Products ordered by the Buyer if the latter does not respect the terms and conditions mentioned above.

A down payment of 40% of the total pre-tax price is payable when ordering Services. The whole balance must be paid when the Services have been fully provided.

Unless otherwise stipulated, payments for invoices must be sent to STATIC TEMPERING's H.O. Payment is complete only when the whole amount has been received. Any outstanding sums of money not paid before an agreed deadline will automatically incur late penalty fees charged at a rate equivalent to 3 times the current legal interest rate. Furthermore, in accordance with article L 441-6 of the French Trade Code, in addition to the late penalty fees, an additional flat rate penalty of 40€ is payable. The payment of the aforementioned late penalty fees does not exempt the company from possible further penalty fees linked to their failure to pay on time.

If staggered payment has been agreed on, the payment instalments must adhere scrupulously to the agreed deadlines. In the event of default on payment, the whole balance must be paid in full, in addition to the late penalty interest fees, as set out in this article. In the event of default on an instalment, STATIC TEMPERING shall have the option of either:

- demanding payment for all outstanding amounts due, whatever the initially planned method and term of payment,
- cancelling the contract, at its sole discretion, if no corrective action is taken by the Buyer within 15 days after notification by registered letter with advice of receipt. In this case, down payments shall be retained by STATIC TEMPERING as compensation but without prejudice for further damages which it may seek via legal action.

The Products and Results must be returned immediately by the Buyer at its own expense and risk.

4. DELIVERY/ TRANSPORT AND PASSING OF RISKS

Delivery: Delivery deadlines run from the date when a Buyer's order has expressly been accepted, in writing, by STATIC TEMPERING. Delivery deadlines end as soon as the ordered Products have been delivered to the Buyer and an invoice (confirming payment has been made) and a delivery note have been handed over. In the case of Services, a formal certificate attesting to the completion of the work ordered by the Buyer will be signed.

Deadlines are non-binding. STATIC TEMPERING shall do its utmost to meet deadlines, but delays do not entitle the Buyer, in any circumstances, to cancel the order, to refuse the Products or to claim for compensation.

Transport and passing of risks: Unless otherwise stated by the Buyer, STATIC TEMPERING will choose the most convenient means of transport to deliver the Products. Delivery is at the Customer's expense.

The risks linked to loss or damage of the Products will be transferred to the Buyer on delivery and receipt of the said Products, whether or not ownership of the Products has been transferred, and whatever the date of order or payment.

The buyer hereby accepts that delivery is carried out by a transporter and that STATIC TEMPERING is no longer legally liable for the ordered Products once they have been handed over to the Transporter, who deems there are no defects.

Therefore, the Buyer cannot claim for compensation from STATIC TEMPERING should there be a problem with delivery or should the Products be damaged during transport or unloading.

5. OWNERSHIP

Until the Buyer has paid for the Products in full, STATIC TEMPERING retains ownership rights over the sold Products and are therefore entitled to re-take possession of the said Products.

Any down payments already paid by the Buyer shall be retained by STATIC TEMPERING as compensation but without prejudice to further damages which it may seek by taking out further legal proceedings.

6. SUPPLIER'S LIABILITY – GUARANTEE

Products delivered by STATIC TEMPERING come with a formal 1-year guarantee which takes effect from the date of delivery or installation. The guarantee covers issues linked to the non-conformity of the products ordered, hidden defects due to the material used or to faulty design or manufacturing which renders the Products unfit for use. The guarantee does not however cover detachable temperature probes.

What is not covered by the Product guarantee:

1) The Buyer is hereby informed that machines sold by STATIC TEMPERING are calibrated in the factory but that it is the Buyer's responsibility to regularly check calibration in order to ensure quality results over time. It is up to the Buyer alone to determine how often to carry out these checks. The Buyer is informed that it is possible to take out a calibration maintenance contract with STATIC TEMPERING, on demand. Consequently, damage to the Product or faulty readings due to incorrect calibration are not covered by the guarantee and are not liable to compensation.

2) The Buyer is also hereby informed that certain Products are fitted with air filters which need to be cleaned and maintained regularly. The Buyer is hereby informed that it is possible to take out an air filter maintenance contract with STATIC TEMPERING. Consequently, damage to the Product or faulty readings due to insufficient cleaning and/or air filter maintenance are not covered by the guarantee and are not liable to compensation.

3) Guarantees do not cover Products which are not properly stored, used in an inappropriate way, used beyond recommended capacity, used for purposes other than for which they were designed, modified or cleaned with inappropriate products. The guarantee does not cover the products for damage due to normal wear and tear, scratches or damage due to knocks or incidents. Neither does the guarantee cover problems linked to force majeure, those caused by the Buyer not complying with the indications set out in the instructions manual, or if products are stored or used in the open air.

The guarantee limits the seller's liability to either exchanging, repairing or refunding faulty products. It is STATIC TEMPERING's sole decision to choose which of these will be implemented. No other compensation or damages can be claimed. STATIC TEMPERING will exchange, or have exchanged, any products or parts which are guaranteed and are considered to be faulty. This guarantee also includes cover for labour costs. When a defective part or product is exchanged the duration of the guarantee fixed above is not prolonged.

Liability:

STATIC TEMPERING cannot be held liable for any direct or indirect damage which the Buyer may incur while the Product is being installed or which is linked to a defect in the Product other than those which are explicitly mentioned in these Guarantee conditions.

Hence, the Buyer guarantees STATIC TEMPERING against any legal action taken out by a third party. Whatever the issue, STATIC TEMPERING's liability shall not exceed the total amount of the order placed by the Buyer.

7. INTELLECTUAL PROPERTY

STATIC TEMPERING retain all the industrial and intellectual property rights linked to the Products, photos and technical documentation which may not be communicated to third parties or used without written permission.

The Buyer guarantees STATIC TEMPERING against (i) any third party claims concerning industrial and intellectual property (ii) and/or any third party lawsuits based on matters of unfair competition and/or parasitic commercial activity linked to elements that the Buyer passed on to STATIC TEMPERING or that STATIC TEMPERING used, on the request of the Buyer, in order to meet the order, and hereby promises to take full financial responsibility for any legal and financial consequences (including legal fees) that STATIC TEMPERING may thereby incur.

STATIC TEMPERING retains the property of all the rights it holds until the day the order has been filled. The Buyer can neither take possession of the studies and results provided for it by STATIC TEMPERING nor disseminate them, until it has paid the agreed amount on the invoice in full.

Unless otherwise stated in a separate agreement between the parties, the Buyer acquires full, legal property of all the results and studies, developments, and/or services carried out, designed and finalised by STATIC TEMPERING within the framework of the Order (hereafter designated as « the Results ») in the Buyer's field of business.

However, any new knowledge acquired by STATIC TEMPERING while carrying out its remit and any new techniques designed while attaining its given objectives, will constitute a broadening of STATIC TEMPERING's know-how and these are deemed to belong to this company.

Should STATIC TEMPERING be assigned a mission which involves developing its know-how to a degree where it creates a new manufacturing procedure or techniques which need protecting, then the patents will be taken out by STATIC TEMPERING and will remain their property. Nevertheless, STATIC TEMPERING formally agrees to grant a free licence to use the patent to the Buyer, upon request, if made by registered letter with advice of receipt. This is in the event that the procedure covered by the patent is deemed essential for them in order to make full use of the Results, but in this case only.

8. FORCE MAJEURE

As specified in the French Civil Code, article 1218, in cases of force majeure, the Parties shall not be held responsible for a failing to comply with contract provisions set out in this agreement or for missing deadlines.

9. ARBITRATION / GOVERNING LAW

With regard to any legal disputes resulting from this agreement concerning its validity, its interpretation, its implementation, its termination and its consequences, competence is expressly attributed to the Trade Tribunal (Tribunal de commerce) to which STATIC TEMPERING's Head Offices is assigned. This agreement was drawn up specifically for the two contracting parties and these General Sales Conditions, as well as the subsequent acts of buying and selling which will result from them, are subject to French Law. The Sales Conditions were written in French. Should they be translated into one or more languages, the original French version will take precedence in the event of legal dispute.