

## Premier Hytemp Terms & Conditions (2014)

### Terms of Trading

#### 1. PRICE

1.1 The price quoted excludes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.

1.2 Our quotations lapse after 7 days (unless otherwise stated).

1.3 The price quoted excludes delivery (unless otherwise stated).

1.4 Rates of tax and duties on the goods will be those applying at the time of delivery.

1.5 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods.

#### 2. DELIVERY

2.1 All delivery times quoted are estimates only.

2.2 If we fail to deliver within a reasonable time after the quoted delivery time, you may (by informing us in writing) cancel the contract, however:

2.2.1 You may not cancel if we receive your notice after the goods have been dispatched; and

2.2.2 If you cancel the contract, you can have no further claim against us under that contract.

2.3 If you accept delivery of the goods after the estimated delivery time, it will be on the basis that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the goods).

2.4 We may deliver the goods in installments. Each installment is treated as a separate contract.

2.5 We may decline to deliver if:

2.5.1 We believe that it would be unsafe, unlawful or unreasonably difficult to do so; or

2.5.2 The premises (or the access to them) are unsuitable for our vehicle.

2.6 If for any reason you fail to accept delivery of any goods when they are ready for delivery, or we are unable to deliver the goods because you have not provided adequate instructions, or if you do not collect the goods by the date we give for collection, we may

2.6.1 Treat the goods as having been delivered on that day (for the purposes of risk, inspection and payment); and

2.6.2 Charge you for the storage or redelivery of those goods, including any costs for insuring the goods.

#### 3. RISK

3.1 The goods are at your risk from the time of delivery.

3.2 Delivery takes place either:

3.2.1 At our premises (if you are collecting them or arranging carriage); or

3.2.2 At your premises or address specified by you (if we are arranging carriage).

3.3 You must inspect the goods on delivery. If any goods are damaged or not delivered, you must write to tell us within three days of delivery or the expected delivery time. You must give us (and any carrier) a fair chance to inspect the damaged goods.

#### 4. PAYMENT TERMS

4.1 You are to pay us in cash or in cleared funds on delivery, unless you have an approved credit account.

4.2 If you have an approved credit account, payment is due no later than the last day of the month following the month of dispatch unless otherwise agreed in writing.

4.3 If you fail to pay us in full on the due date we may:

4.3.1 Suspend or cancel future deliveries;

4.3.2 Cancel any discount offered to you;

Charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998;

a. calculated (on a daily basis) from the date of our invoice until payment;

b. before and after any judgment (unless a court orders otherwise);

4.3.3 claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and

4.3.4 Recover (under clause 4.7) the cost of taking legal action to make you pay.

4.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.

4.5 You do not have the right to set off any money you may claim from us against anything you may owe us.

4.6 While you owe money to us, we have a lien on any of your property in our possession.

4.7 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly including financing costs, including legal costs on a full indemnity basis and the cost of instructing a debt recovery agency to recover a debt due to us if any) following any breach by you of any of your obligations under these terms.

4.8 Where it is agreed that payment is to be made by letter of credit, the letter must be irrevocable and be drawn on or confirmed by a reputable UK bank and to be paid over a UK counter. All associated documentation shall be presented to us on request.

#### 5. TITLE

5.1 Until you pay all debts you may owe us:

5.1.1 all goods supplied by us remain our property;

5.1.2 You must store them so that they are clearly identifiable as our property;

5.1.3 You must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;

5.1.4 You may use those goods and sell them in the ordinary course of your business, but not if:

a. we revoke that right (by informing you in writing); or

b. you become insolvent.

5.2 You must inform us (in writing) immediately if you become insolvent.

5.3 If your right to use and sell the goods ends you must allow us to remove the goods.

5.4 We have your permission to enter any premises where the goods may be stored:

5.4.1 At any time, to inspect them; and

5.4.2 After your right to use and sell them has ended, to remove them, using reasonable force if necessary.

5.5 Despite our retention of title to the goods, we have the right to take legal proceedings to recover the price of goods supplied should you not pay us by the due date. 5.6 You are not our agent. You have no authority to make any contract on our behalf or in our name.

## 6. WARRANTIES

6.1 We warrant that the goods:

6.1.1 Comply with their description on our order confirmation form; and

6.1.2 is free from material defect at the time of delivery (as long as you comply with clause 6.3).

6.2 We give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose. 6.3 If you believe that we have delivered goods that are defective in materials or workmanship, you must:

6.3.1 Inform us (in writing), with full details, as soon as possible; and

6.3.2 Allow us to investigate (we may need access to your premises and product samples).

6.4 If the goods are found to be defective in material or workmanship (following our investigations), and you have complied with those conditions (in clause 6.3) in full, we will (at our option) replace the goods or refund the price.

6.5 We are not liable for any other loss or damage arising from the contract or the supply of goods or their use, even if we are negligent, including (as examples only);

6.5.1 direct financial loss, loss of profits or loss of use; and

6.5.2 indirect or consequential loss

6.6 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to £1,000,000.

6.7 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.

6.8 Nothing in these terms restricts or limits our liability for death or personal injury resulting from negligence.

6.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation

## 7. SPECIFICATION

7.1 If we prepare the goods in accordance with your specifications or instructions you must ensure that:

7.1.1 all specifications, instructions or materials are supplied to us within a reasonable time;

7.1.2 the specifications or instructions are accurate;

7.1.3 goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them; and

7.1.4 Your specifications or instructions will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.

7.2 We reserve the right;

7.2.1 To make any changes in the specifications of our goods that are necessary to ensure they conform to any applicable safety or statutory requirements; and

7.2.2 To make without notice any minor modifications in our specifications we think necessary or desirable.

## 8. RETURN OF GOODS

8.1 We will accept the return of goods from you only:

8.1.1 By our prior agreement (confirmed in writing);

8.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered); and

8.1.3 Where the goods are as fit for sale on their return as they were on delivery.

## 9. EXPORT TERMS

9.1 Clause 9 of these terms applies (except to the extent that it is inconsistent with any written agreement between us) where we supply the goods over an international border or overseas.

9.2 The 'Inco terms' of the International Chamber of Commerce which are in force at the time when the contract is made apply to exports, but these terms prevail to the extent that there is any inconsistency.

9.3 Unless otherwise agreed, the goods are supplied ex works our place of manufacture for a maximum period of fourteen days from the date of notification.

9.4 Where the goods are to be sent by us to you by a route including sea transport we are under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

9.5 You are responsible for arranging testing and inspection of the goods at our premises before shipment (unless otherwise agreed). We are not liable for any defect in the goods which would be

apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.

9.6 We are not liable for death or personal injury arising from the use of the goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

## 10. CANCELLATION

10.1 You may not cancel the order unless we agree in writing (and clauses 2.2.2 and 10.2 then apply

10.2 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.

10.3 We may suspend or cancel the order, by written notice if:

10.3.1 You fail to pay us any money when due (under the order or otherwise);

10.3.2 You become insolvent;

10.3.3 You fail to honour your obligations under these terms.

## 11. WAIVER AND VARIATIONS

11.1 Any waiver or variation of these terms is binding in honour only unless:

11.1.1 Made (or recorded) in writing;

11.1.2 Signed on behalf of each party; and

11.1.3 Expressly stating an intention to vary these terms.

11.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.

11.3 In the event that you wish to vary the terms of your order, and subject to our written approval to such variation, we shall reserve the right to charge such additional fees as may be required to implement the adjusted order.

## 12. FORCE MAJEURE

12.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.

12.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

## 13. GENERAL

13.1 English law is applicable to any contract made under these terms. The English and Welsh courts have non-exclusive jurisdiction.

13.2 If you are more than one person, each of you has joint and several obligations under these terms.

13.3 If any of these terms are unenforceable as drafted:

13.3.1 It will not affect the enforceability of any other of these terms; and

13.3.2 If it would be enforceable if amended, it will be treated as so amended.

13.4 We may treat you as insolvent if:

13.4.1 You are unable to pay your debts as they fall due; or

13.4.2 You (or any item of your property) become the subject of:

a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);

b. any application or proposal for any formal insolvency procedure; or

c. any application, procedure or proposal overseas with similar effect or purpose.

13.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.

13.6 Any notice by either of us which is to be served under these terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.

13.7 No contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.

13.8 The only statements upon which you may rely in making the contract with us, are those made in writing by someone who is our authorised representative and either:

13.8.1 Contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or

13.8.2 Which expressly state that you may rely on them when entering into the contract.

13.9 Please note that we may transfer personal information about you to those we may appoint to administer your account or recover amounts owing. That may include, for example, passing information about you to our insurers, debt recovery agents and solicitors, if you fail to pay us.

Standard Conditions of Purchase

## 1. DEFINITIONS

In these conditions unless the context otherwise provides:-

a) "The Company" means Premier Hytemp Limited.

b) "Contract" means the contract for the sale and purchase of the goods and/or the supply and acquisition of the service. Where the subject of the contract is the latter, references to delivery shall mean performance of the services.

c) "The Supplier" means the person, firm, company or other organisation on which the order is placed and shall include any subsidiary companies involved in the order.

d) "The Order" means the Purchase Order of the Company and every amendment thereto.

The titles of these conditions are not part of them but are for convenience of reference only.

## 2. CONDITIONS PREVAILING

Notwithstanding anything to the contrary which may appear on the Supplier's quotations, all contracts by the Company shall be subject to the terms and conditions printed below. Delivery of the goods or performance of service by the Supplier shall of itself constitute an acceptance of the terms and conditions of purchase, where acceptance shall not previously have been communicated to the Company. No amendments to the order or conditions shall form part of the contract unless agreed by an authorised officer of the Company.

## 3. TIME OF THE ESSENCE

Where time for delivery and/or performance by the Supplier is specified, time shall be of the essence of the contract. The Company reserves the right to cancel any order in full or part without paying compensation if not delivered/performed within the time stated or alternatively, to claim reasonable compensation for any losses due to delayed delivery/performance.

## 4. DELIVERY

Unless the Company agrees otherwise in writing, all goods and materials supplied are to be delivered by the Supplier carriage paid to the address for delivery specified in the order. Any goods lost or damaged in transit shall be at the Supplier's risk but the Company shall notify the Supplier of any such loss or damage within a reasonable time. In such event the Company may at its option cancel the contract in whole or part without any further liability to the Supplier. Packing shall be adequate to ensure the safety of the goods in transit.

## 5. TITLE

Title to and property in all goods and materials shall pass to the Company when delivery is made to the premises specified to the Company or they are collected by the Company or its agent.

## 6. CANCELLATION

The Company reserves the right to cancel the contract prior to commencement of manufacture of goods designated specifically for the Company without penalty. In the event of the Company's relevant contract with its own customer being cancelled, delayed, interrupted or otherwise restricted by force majeure, lock out, strikes of workmen, or any other cause whatsoever beyond the control of the Company then the Company shall be at liberty to defer the delivery or to cancel the contract without liability, whether or not manufacture has commenced. The Supplier shall have the right to cancel the contract if unable for reasons wholly beyond its control to carry out its obligations.

## 7. QUALITY

The Company reserves the right:-

- a) To reject any goods or services which are not in accordance with specifications, samples or descriptions, or fit for use for any purpose, which shall have been made known to the Supplier.
- b) To reject any goods for which proper and specified certification is not provided
- c) To refuse acceptance of quantities in excess of those ordered or delivered ahead of schedule.

Goods rejected will be returned at the Supplier's risk and expense. In the event of a complaint, the Company does not accept responsibility for payment until the complaint is resolved and it is from

this date that the agreed time of payment is calculated. Until such complaints are resolved and the invoice has been agreed, the Company does not accept liability for the goods and the Supplier must make his own insurance arrangements.

## 8. CLAIMS

The Supplier will indemnify the Company against the following:

- a) Loss or damage, or injury howsoever and whensoever arising, caused to the Company, or for which the Company may be liable to third parties, due to defective design materials, workmanship or unsound quality of the goods or services supplied.
- b) Claims in respect of death or injury to any employee of the Supplier, or of the agent or sub-contractors of the Supplier while in or about the Company's sites or works or other places of business.
- c) Consequential loss or damage sustained by the Company or for which the Company may be liable, as a result of the failure of the Supplier to perform the work or supply the materials in accordance with the terms of the contract.

## 9. GUARANTEE

In addition to any other remedy that the Company may have hereunder if the goods or any part of them are found to contain any defects arising from faulty design materials or workmanship then unless it can be shown that the Company is responsible for such defect the Supplier shall within a reasonable period of time of being notified of such defect by the Company make good the defect by replacing the goods at the Supplier's risk and expense.

## 10. PRICE

There shall be no variation in the price specified in the contract unless agreed to in writing by an authorised officer of the Company.

## 11. DOCUMENTATION

- a) An advice note shall be presented with each delivery stating the name of the Supplier, the Company's order number, quantity, relevant specifications of quality and dimensions. In addition, a packing note stating order number and quantity must be included with every package.

The Supplier will also provide where relevant a certificate relating to the chemical and mechanical properties of the goods. Failure to provide proper documentation with each delivery may result in the goods being rejected or payment being delayed.

- b) A priced invoice must be forwarded for each delivery quoting the Company's order number and the Supplier's advice note number failing which payment will be delayed.
- c) A statement of account must be received no later than seven days after the end of the calendar month in which the goods are delivered.

## 12. PAYMENT

- i) Payment terms shall be 60 days following the end of the month in which the goods are received unless otherwise agreed in writing.

ii) Under no circumstances shall the Company be liable for interest charges on any payments that may be considered overdue.

iii) The Company may withhold payment of the Supplier's invoice if there is inconsistency regarding proof of delivery, quality, price or other dispute.

iv) The Company shall be entitled to deduct from or set off against any money due from the Company to the Supplier any sums which the Supplier may be liable to pay to the Company.

v) If the Supplier requires payment by Bill of Exchange or other instrument the Supplier shall bear any bankers' or other extra cost incurred in such payment.

### 13. DRAWINGS & INTELLECTUAL PROPERTY

All specifications, patterns, tools, equipment, drawings, samples and information provided by the Company to the Supplier shall remain the property of the Company to whom they shall be returned on completion of the contract and the Supplier shall not disclose/transfer them to any third party without the express written consent of the Company. The Supplier shall indemnify the Company in full against all liability, loss, damages, costs and expenses awarded against or incurred by the Company against any claim that the goods infringe in their use or resale, any kind of intellectual property rights, except to the extent that the claim arises from any specification supplied by the Company.

### 14. ASSIGNMENT

The Supplier shall not without the written consent of the Company assign, transfer or sub-let the contract or any part thereof other than for minor requirements or for any part of the goods of which the makers or suppliers are named in the Order.

### 15. WORK ON PREMISES

Where the contract provides for work to be done on the Company's premises:

i) The Supplier shall:

a) ensure full observance of relevant legislation including the Health & Safety at Work Act 1974 and any relevant regulations made under it by any person employed by or carrying out work on its behalf.

b) ensure that any waste is disposed of in accordance with the Environment Protection Act 1990 and that all relevant regulations made under the Act are complied with.

c) not commit any act on the Company's premises which will render the Company liable at common law or by virtue of any statute to any third party.

ii) The Supplier shall comply with all requirements as to security on entering or leaving the Company's premises.

iii) The Supplier shall maintain public liability insurance for a minimum limit of indemnity of £2,000,000 for any one occurrence and shall provide evidence on request of having done so.

### 16. INSOLVENCY

If the Supplier shall become bankrupt or have a receiving order made against him, or compounds with his creditors, or being a corporation shall commence to be wound up (except for the purpose of

amalgamation or reconstruction) or carry on its business under a receiver or administrator for the benefit of its creditors, the Company may either:

- a) terminate the contract by notice in writing to the Supplier or Receiver or Liquidator or
- b) give the Receiver or Liquidator the option of carrying out the contract subject to a guarantee of due performance up to an agreed amount.

#### 17. NOTICES

Any notice under the relevant purchase order shall be given by post, telegram or facsimile with written confirmation addressed to the address stated on the order for the Company and Supplier or such address as either may notify to the other in writing for the purpose. Any notice so served shall be deemed to be received in the ordinary course of post.

#### 18. DISPUTES

The parties will initially attempt in good faith to resolve any disputes by negotiation between the respective authorised officers. If the matter cannot be resolved by these means within a reasonable period of time, the dispute shall be referred for litigation.

#### 19. MODIFICATION (Prejudice)

The rights and remedies of the Company under the contract shall not be diminished, waived or extinguished, nor shall any acceptance of performance by the Supplier of his obligations hereunder be implied by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of, or delay by the Company in asserting or exercising any such rights or remedies or by any payment to the Supplier of, or on account of the contract price.

#### 20. INTERPRETATION AND JURISDICTION

Any dispute with regard to the interpretation, validity, application or otherwise shall be governed by English Law and the English Courts shall have exclusive jurisdiction.