

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **1995-07-28**  
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### FILER

#### TEMTEX INDUSTRIES INC

CIK: **110740** | IRS No.: **751321869** | State of Incorpor.: **DE** | Fiscal Year End: **0831**  
Type: **S-8** | Act: **33** | File No.: **033-61415** | Film No.: **95557340**  
SIC: **3433** Heating equipment, except electric & warm air furnaces

Mailing Address  
GRAYSTONE CENTRE STE  
650  
3010 LBJ FREEWAY LB 55  
DALLAS TX 75234-2705

Business Address  
GRAYSTONE CENTRE STE  
650  
3010 LBJ FRWY - LB 55  
DALLAS TX 75234-2705  
2144841845

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

TEMTEX INDUSTRIES, INC.

(Exact name of Registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

75-1321869  
(I.R.S. Employer  
Identification No.)

3010 LBJ Freeway, Suite 650  
Dallas, Texas  
(Address of Principal Executive Offices)

75234  
(Zip Code)

1990 STOCK PLAN FOR KEY EMPLOYEES OF  
TEMTEX INDUSTRIES, INC. AND ITS SUBSIDIARIES  
(Full title of the plan)

E. R. BUFORD  
President and Chief  
Executive Officer  
TEMTEX INDUSTRIES, INC.  
3010 LBJ Freeway, Suite 650  
Dallas, Texas 75234  
(214) 484-1845  
(Name, address and telephone  
number, including area code,  
of agent for service)

Copy to:  
STANLEY R. HULLER, ESQ.  
Arter, Hadden, Johnson & Bromberg  
1717 Main St., Suite 4100  
Dallas, Texas 75201-4605  
(214) 761-2100

<TABLE>

CALCULATION OF REGISTRATION FEE

<S>	<C>	<C>	<C>	<C>
Title of		Proposed Maximum	Proposed Maximum	

Securities to be Registered	Amount to be Registered(1)	Offering Price Per Share(2)	Aggregate Offering Price(2)	Amount of Registration Fee(3)
Common Stock (\$ .20 par value)	100,000 Shares	\$5.1875	\$518,750	\$178.88

Page one of 19 sequentially numbered pages.  
Index to exhibits is located on page 4.

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<FN>

(1) The securities to be registered represent additional shares of Common Stock reserved for issuance under the 1990 Stock Plan For Key Employees of Temtex Industries, Inc. and its Subsidiaries (the "Plan"). Pursuant to Rule 416, shares of Common Stock of the Company allotted as restricted stock or issuable pursuant to the exercise of options granted or to be granted under the Plan in order to prevent dilution resulting from any future stock split, stock dividend or similar transaction are also being registered hereunder.

(2) Estimated solely for the purpose of calculating the registration fee based upon the average of the high and low price per share of the Common Stock on the Nasdaq Stock Market's National Market on July 24, 1995 (\$5.1875), in accordance with Rules 457(c) and (h) and General Instruction E to Form S-8.

(3) Relates only to additional shares registered hereby and does not include the amount of the registration fee previously paid in connection with the 95,000 shares previously registered by that Registration Statement on Form S-8 filed with the Commission on January 30, 1995 (SEC Reg. No. 33-88980).

</FN>

</TABLE>

The contents of that Registration Statement on Form S-8, SEC File No. 33-88980, filed with the Securities and Exchange Commission on January 30, 1995 (the "Original Registration Statement") relating to the 1990 Stock Option Plan for Key Employees of Temtex Industries, Inc. and its Subsidiaries, are incorporated herein by reference.

The only information and documents required in this Registration Statement that were not included in the Original Registration Statement are the additional Exhibits included in "Item 8. Exhibits" below.

Item 8. Exhibits.

(a) Exhibits.

Exhibit	Description
4.5	1990 Stock Plan for Key Employees of Temtex Industries, Inc. and its Subsidiaries, as amended (filed herewith)
5.1	Opinion of Arter, Hadden, Johnson & Bromberg (filed herewith)
23.1	Consent of Arter, Hadden, Johnson & Bromberg (included in their opinion filed as Exhibit 5.1)
23.2	Consent of Ernst & Young, LLP (filed herewith)

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SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Dallas, Texas, on July 25, 1995:

TEMTEX INDUSTRIES, INC.

By: E. R. Buford  
President and  
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons and in the capacities indicated on July 25, 1995:

Signature	Title
James E. Upfield	Chairman of the Board and Director

E. R. Buford	Chief Executive Officer, President and Director (Principal Executive Officer)
R. N. Stivers	Vice President-Finance and Chief Financial Officer (Principal Financial and Accounting Officer)
Larry J. Parsons	Director
Joseph V. Mariner, Jr.	Director
Scott K. Upfield	Director

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INDEX TO EXHIBITS

Exhibit No.	Description of Exhibit	Sequentially Numbered Page
4.5	1990 Stock Plan for Key Employees of Tentex Industries, Inc. and its Subsidiaries, as amended (filed herewith)	5
5.1	Opinion of Arter, Hadden, Johnson & Bromberg (filed herewith)	16
23.1	Consent of Arter, Hadden, Johnson & Bromberg (included in their opinion filed as Exhibit 5.1)	
23.2	Consent of Ernst & Young, LLP (filed herewith)	19

EXHIBIT 4.5

1990 STOCK PLAN FOR KEY EMPLOYEES OF  
TEMTEX INDUSTRIES, INC. AND ITS SUBSIDIARIES  
As amended at 1995 Annual Meeting of Stockholders

1. Objectives of the Plan

The Plan is intended to encourage ownership of Common Stock of Temtex Industries, Inc., a Delaware corporation (hereinafter called the "Corporation"), by eligible key employees and to provide incentives for them to put forth maximum efforts for the success of the Corporation. By extending to key employees the opportunity to acquire proprietary interests in the Corporation and to participate in its success, the Plan may be expected to benefit the Corporation and its stockholders by making it possible for the Corporation to attract and retain the best available talent and by rewarding key management and technical personnel for their part in increasing the value of the Corporation's shares.

2. Stock Reserved for the Plan

There will be reserved for issue under the Plan upon the allotment of restricted stock or upon the exercise of Non-  
-Qualified or Incentive Options (as hereinafter defined) or stock appreciation rights in conjunction therewith, one hundred ninety five thousand (195,000) shares of Common Stock, par value \$0.20 per share ("Common Stock"), of the Corporation, subject to adjustment as provided in paragraph 17 below. Such shares may be in whole or in part, as the Board of Directors of the Corporation shall from time to time determine, authorized but unissued shares of Common Stock or issued shares of Common Stock which shall have been reacquired by the Corporation. If any option granted under the Plan shall expire or terminate for any reason without having been exercised in full or is reduced as to the number of shares covered thereby, the unpurchased shares subject thereto, or the shares by which such option is reduced, shall again be available for the purposes of the Plan. If stock appreciation rights shall be exercised under this Plan, only the number of shares actually delivered upon the exercise of such stock appreciation rights shall be charged against the maximum limitation on the aggregate number of shares which may be issued under the Plan, and

otherwise the related stock option shall be deemed to have terminated for a reason other than the exercise thereof for the purpose of such maximum limitation. If restricted stock shall be issued and if by reason of such restrictions any of the shares of restricted stock shall revert back to the Corporation, such shares shall again be available for the purposes of the Plan.

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### 3. Administration of the Plan

The Plan shall be administered by the committee referred to in Paragraph 4 (hereinafter called the "Committee"). Subject to express provisions of the Plan, the Committee shall have plenary authority, in its discretion, to determine the individuals to whom, and the time or times at which, restricted stock shall be allotted or options or stock appreciation rights shall be granted, the number of shares to be subject to each allotment of restricted stock, stock option and stock appreciation right, the option price, the duration of each option, whether restricted stock should be issued on the exercise of an option or stock appreciation right, the nature of the restrictions to be applicable to any restricted stock issued (whether by allotment or upon the exercise of an option or stock appreciation right), whether any stock option granted hereunder shall constitute an Incentive Option (as hereinafter defined), or a Non-Qualified Option (as hereinafter defined), and the other terms and provisions of each allotment of restricted stock, stock option and stock appreciation right, which may include provisions for repurchase by the Corporation of shares of Common Stock issued pursuant to the Plan. In making such determination, the Committee may take into account the nature of the services rendered by the respective key employees, their present and potential contributions to the Corporation's success, and such other factors as the Committee in its discretion shall deem relevant. Subject to the express provisions of the Plan, the Committee shall also have plenary authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to it, to determine the terms and provisions of the agreements with the respective recipients of benefits under the Plan (which need not be identical) and to make all other determinations necessary or advisable for the administration of the Plan. The Committee's determination on the matters referred to in this paragraph 3 shall be conclusive.

### 4. The Committee

The Committee shall consist of three or more members of the Board of Directors of the Corporation, who are not currently, and within one year prior to appointment have not been, eligible

for selection as a person to whom restricted stock may be allotted or to whom stock options or stock appreciation rights may be granted pursuant to the Plan. Although the members of the Committee shall not be eligible to receive benefits under the Plan while they are serving on the Committee, service by a director on the Committee shall not affect in any way any benefits which may be granted to such director while not serving on the Committee. The Committee shall be appointed by the Board of Directors, which may from time to time appoint members of the Committee in substitution for members previously appointed and may fill vacancies, however caused, in the Committee. The Committee may select one of its members as its Chairman and shall hold its meetings at such times and places as it may determine. A majority of its members shall constitute a quorum. All determinations of the Committee shall be made by not less than a majority vote at a meeting duly called and held. The Committee may appoint a secretary, shall keep minutes of its meetings and shall make such rules and regulations for the conduct of its business as it shall deem advisable.

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#### 5. Eligibility

Subject to the limitations set forth in paragraph 6 hereof, benefits under the Plan may be granted only to key employees (which term as used herein includes officers) of the Corporation and its present and future subsidiary corporations (as defined in Section 425(f) of the Internal Revenue Code of 1986, as amended (the "Code")) (herein called Subsidiaries ) as selected by the Committee. A director of the Corporation or of a Subsidiary who is not also an employee of the Corporation or one of its Subsidiaries will not be eligible to receive benefits under the Plan. Nothing contained in this Plan shall be construed to limit the right of the Corporation to grant options and other benefits otherwise than under this Plan in connection with the acquisition, by purchase, lease, merger, consolidation or otherwise, of the business and assets of any corporation, firm or association, including options granted to employees thereof who become employees of the Corporation or a Subsidiary, or for other proper corporate purposes.

#### 6. Stock Options

a. Subject to the express provisions of the Plan, the Committee shall have full and complete authority to grant options under the Plan which constitute "incentive stock options" within the meaning of Section 422A of the Code (such options being hereinafter referred to as "Incentive Options") or to grant options under the Plan which do not constitute Incentive Options (such options being hereinafter referred to as "Non-Qualified



Options") (hereinafter Incentive Options and Non-Qualified Options may sometimes be referred to collectively as 'Stock Options' or 'Options').

b. Options may be granted to eligible employees upon such terms and conditions as the Committee may deem appropriate in its discretion, provided that (i) Incentive Options shall comply with all of the requirements contained in Section 422A of the Code; (ii) in no event shall an Incentive Option be granted hereunder to any person who, at the time such Incentive Option is granted, owns (as defined in Sections 422A and 425 of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Corporation or of its parent corporation, if any, or of any Subsidiary unless (A) at the time such Incentive Option is granted, the option price is at least 110% of the fair market value of the stock subject to such Incentive Option, and (B) such Incentive Option by its terms is not exercisable after the expiration of 5 years from the date the Incentive Option is granted; (iii) the aggregate fair market value (determined as of the time the Incentive Option is granted) of the stock with respect to which Incentive Options are exercisable for the first time by any individual during any calendar year under the Plan (and under any other plans granting incentive stock options which may be maintained by the Corporation or by its parent corporation, if any, or any Subsidiary) shall not exceed \$100,000; and (iv) no eligible employee shall receive any grant of options, whether Incentive Options or Non-Qualified Options, exercisable for more than twenty-five thousand (25,000) shares of Common Stock during any one fiscal year of the Corporation.

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## 7. Stock Appreciation Rights

Any Option granted under the Plan may, in the discretion of the Committee, include a stock appreciation right, either at the time of grant or by amendment. Such stock appreciation right shall be subject to such terms and conditions as the Committee shall impose, in its discretion, including the following:

a. A stock appreciation right shall not be exercisable to any greater extent than the related Stock Option is exercisable;

b. A stock appreciation right shall be exercisable only after the expiration of any waiting period specified by the Committee, and any such waiting period may be longer (but not shorter) than the waiting period, if any, specified for the exercise of the related Stock Option.

c. A stock appreciation right shall entitle the optionee at his election to surrender to the Corporation the Stock Option in which it is included, or any portion thereof, in lieu of exercising such Stock Option, or portion thereof, and to receive from the Corporation in exchange therefor that number of shares having an aggregate value equal to the excess (if any) of the market value (as hereinafter defined) of one share over the purchase price per share specified in such Option multiplied by the total number of shares called for by the Option or portion thereof, which is so surrendered, with a cash settlement on the basis of such excess of market value over option price to be made for any fractional share interests. In the discretion of the Committee, the Corporation shall be entitled to elect instead to settle its obligation, arising out of the exercise of a stock appreciation right, by the payment in cash equal to the aggregate market value of the shares it would otherwise be obligated to deliver, or the Corporation may elect to settle such obligation in part with stock and in part with cash. The Committee may, however, in its discretion, agree with any holder of a stock appreciation right that the Corporation will not exercise its election for a cash settlement without the consent of the holder of such stock appreciation right. The market value of a share for the purpose of this paragraph 7 shall be the closing sales price of a share on the National Association of Securities Dealers Automated Quotation System, as reported by the National Association of Securities Dealers, Inc. ("NASD"), if the shares are so quoted, or if not so quoted, the mean between dealer "bid" and "ask" prices of the shares in the over-the-counter market, as reported by the NASD, or, if the shares are listed upon an established stock exchange, the closing price of a share on such stock exchange, in each such case on the trading day next preceding the date on which the stock appreciation right shall be exercised, except that, if the Corporation shall elect to settle its obligation in cash, then such market value shall be determined by reference to the higher of such reported closing or other price or the closing or other price of a share as so reported on the trading day next preceding the date of such election by the Corporation; provided that if in the opinion of the Committee determination of market value in such manner shall not then be practical, the market value shall be determined in such other manner as may be specified by the Committee in its discretion. Any such determination of market value shall in all respects be subject to any applicable rules and regulations under Section 422A of the Code with respect to the determination of fair market value in the case of any stock appreciation right issued in connection with an Incentive Option.

## 8. Restricted Stock

Subject to the express provisions of the Plan, the Committee shall have full authority to allot to eligible employees, as a bonus, shares of Common Stock as restricted stock, upon such terms and subject to such restrictions and conditions as the Committee may deem appropriate in its discretion. Also, any Non-Qualified Option or related stock appreciation right granted under the Plan may, in the discretion of the Committee, either at the time of grant or by amendment to which the optionee consents, provide for the issuance of restricted stock, in whole or in part, upon the exercise of such Non-Qualified Option or related stock appreciation right, such restricted stock to be issued upon such terms and subject to such restrictions and conditions as the Committee may deem appropriate in its discretion. Any such restrictions may, in the discretion of the Committee, be intended to subject the shares of Common Stock issued under such restrictions to a "substantial risk of forfeiture" (as defined in Section 83 of the Code) until such restrictions shall lapse or be removed.

## 9. Option Prices

The purchase price of the Common Stock under each Stock Option shall be determined by the Committee, but shall not be less than 100% of the fair market value of the stock at the time of the granting of the Option. Such fair market value shall be determined by the Committee and may be computed by such method as the Committee shall consider will reflect the fair market value of the Common Stock on such day; provided, however, that the method used by the Committee to value the Common Stock in connection with any Incentive Option shall be consistent with any applicable regulations adopted by the Treasury Department under Section 422A of the Code.

## 10. Term of Stock Options, Stock Appreciation Rights and Stock Restrictions

The term of each Stock Option and any related stock appreciation right shall, subject to the limitations set forth herein, be for such period (not to exceed ten years and one month from the date such Option is granted in the case of any Non-Qualified Option or ten years from the date such Option is granted in the case of any Incentive Option) as the Committee shall determine, and shall be subject to earlier termination as provided in this Plan. All allotments of restricted stock shall provide that such restricted stock shall revert back to the Corporation to the extent that the restrictions thereon have not lapsed or been removed within such period as the Committee shall determine, and the right to such shares may become sooner

forfeitable as provided in this Plan.

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11. Exercise of Stock Options and Stock Appreciation Rights

Subject to any applicable legal requirements (including, in the case of Incentive Options or related stock appreciation rights, any requirements pursuant to Section 422A of the Code), and unless otherwise provided in the option agreement, each Stock Option, and any related stock appreciation right, shall be exercisable, in whole at any time, or in part from time to time during the term of the Option. The purchase price of the shares as to which an Option shall be exercised shall be paid in full at the time of exercise. Except as provided in paragraphs 15 and 16 hereof, no Option or related stock appreciation right may be exercised at any time unless the holder is then a regular employee of the Corporation or of a Subsidiary and has continuously remained an employee at all times since the date of the granting of the Option. The holder of an Option shall not have any rights of a stockholder with respect to the shares covered by his Option until such shares shall be issued to him upon the due exercise of the Option or related stock appreciation right. Upon the exercise of any Option or stock appreciation right, any applicable taxes which the Corporation is required to withhold shall be paid to the Corporation and any information which the Corporation deems necessary shall be supplied to the Corporation.

12. Issuance of Restricted Stock

Promptly following the award to an employee by the Committee of an allotment of restricted stock or the exercise by an employee of a Non-Qualified Option or related stock appreciation right entitling the holder to restricted stock, the Corporation shall issue to the employee one or more certificates representing the shares allotted. The recipient shall thereupon become a stockholder of the Corporation with respect to all of the shares represented by such certificate or certificates; and unless the Committee has otherwise specified, such recipient shall have all of the rights of a stockholder with respect to all such shares, including the right to vote such shares and to receive dividends, but subject to the terms, restrictions and conditions specified by the Committee. The certificate or certificates representing restricted stock shall be inscribed with a legend referring to this Plan and the agreement under which such restricted stock is issued, and such certificate or certificates, along with blank stock powers, shall be deposited in escrow under an escrow agreement specified by the Committee, to be held by the escrow agent for delivery to the holder only when and to the extent that

the restrictions specified by the Committee shall lapse or be removed. Upon the occurrence of an event such as those specified in paragraph 17, if the holder of restricted shares which are being held in escrow shall by reason of such event become entitled to new or additional or different securities, such new, additional or different securities shall likewise be deposited in escrow, with blank stock powers or other instruments of transfer, to be held subject to the same restrictions specified for the restricted stock originally allotted. The Committee may make such provision as it deems appropriate in an allotment of restricted stock with respect to the possible termination of the employment of the holder before the restrictions shall otherwise lapse or be removed.

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13. Agreement to Serve

Each individual receiving the grant of an Option or an allotment of restricted stock hereunder shall, as one of the terms of the grant or allotment, agree that he will remain in the service of the Corporation or one of its Subsidiaries for a period of at least two years from the date of grant or allotment. Such service shall (subject to the provisions of paragraph 15 hereof and to the terms of any contract between the Corporation or any such Subsidiary and such employee) be at the pleasure of the Board of Directors of the Corporation or such Subsidiary and at such compensation as such Board of Directors or any committee thereof shall determine from time to time. Unless otherwise specified by the Committee, any termination of such individual's service during such period that is either (i) by the Corporation or such Subsidiary for cause or (ii) voluntary on the part of the individual and without the written consent of the Corporation or such Subsidiary shall be deemed a violation by the individual of such agreement. In the event of such violation, any Option or Options and any related stock appreciation rights, to the extent not theretofore exercised, and any rights to restricted stock, to the extent the restrictions have not theretofore lapsed or been removed, held by him under the Plan, shall forthwith terminate. Retirement at the normal retirement date as prescribed from time to time by the Corporation or such Subsidiary shall be deemed to be a termination of employment with consent.

14. Non-Transferability of Restricted Stock, Stock Options and Stock Appreciation Rights

No stock Option or stock appreciation right granted under the Plan and no restricted stock allotted under the Plan (before the restrictions have lapsed or been removed) shall be transferable otherwise than by will or the laws of descent and

distribution, and an Option or stock appreciation right may be exercised, during the lifetime of the holder thereof, only by him. An Option, stock appreciation right or restricted stock transferred by will or the laws of descent and distribution shall remain subject to all of the terms of this Plan and the agreement governing such Option, stock appreciation right or restricted stock.

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15. Termination of Employment of Holder of Stock Option

In the event of the termination of the employment of the holder of a Stock Option, other than by reason of death, unless his Option shall have been previously terminated pursuant to the provisions of paragraph 13 above or unless otherwise provided in his option agreement, he may exercise his Option and any related stock appreciation right at any time within three months after such termination, but in no event after the expiration of the term of the Option, if and to the extent he was entitled to exercise such Option or stock appreciation right at the date of such termination. Options granted under the Plan shall not be affected by any change of duties or position so long as the holder continues to be an employee of the Corporation or of a Subsidiary. Nothing in the Plan or in any Option or stock appreciation right granted pursuant to the Plan or in any allotment of restricted stock under the Plan shall confer on any individual any right to continue in the employ of the Corporation or any of its Subsidiaries or interfere in any way with the right of the Corporation or any of its Subsidiaries to terminate his employment at any time.

16. Death of Holder of Stock Option

In the event of the death of the holder of an Option while in the employ of the Corporation or of a Subsidiary, or while he is still entitled to exercise the Option as provided in paragraph 15 hereof, unless otherwise provided in his option agreement, the Option and any related stock appreciation right theretofore granted to him may be exercised by a legatee or legatees of the option holder under his last will, or by his personal representatives or distributees, at any time within a period of one year after his death, but in no event after the expiration of the term of such option, if and to the extent that he was entitled to exercise such option or stock appreciation right at the date of his death.

17. Adjustments Upon Changes in Capitalization

Notwithstanding any other provision of the Plan, the

agreements governing Stock Options, stock appreciation rights and restricted stock may contain such provisions as the Committee shall determine to be appropriate for the adjustment of the number and class of shares subject to each allotment of restricted stock, Stock Option and stock appreciation right and the option prices and other terms in the event of changes in the outstanding Common Stock of the Corporation by reason of stock dividends, recapitalizations, mergers, separations, reorganizations, liquidations, consolidations, split-ups, combinations or exchanges of shares and the like, and, in the event of any such change in the outstanding Common Stock of the Corporation, the aggregate number and class of shares available under the Plan shall be appropriately adjusted by the Committee in its discretion, and the determination of the Committee shall be conclusive; provided such adjustments shall conform to any then applicable provisions of the Code and regulations thereunder.

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18. Special Provisions Regarding Change in Control

The Board of Directors or the Committee may from time to time make special provisions for one or more employees respecting a possible change in control of the Corporation, and to the extent that any such special provisions made with the consent of the affected employee may have the effect of accelerating vesting of stock options granted under the Plan or removal of restrictions on restricted stock allotted under the Plan or the effect of preventing an immediate termination of benefits, such special provisions shall be controlling over and shall be deemed to be an amendment of any inconsistent terms of the agreement with the employee respecting such stock options or restricted stock, and termination of employment by any such employee in accordance with such special provisions upon a change in control shall be deemed to be with the consent of the Corporation or Subsidiary then employing such employee, for the purposes of the Plan.

19. No Loans to Holders of Stock Options

Neither the Corporation nor any Subsidiary may directly or indirectly lend money to any individual for the purpose of assisting him to acquire or carry shares of Common Stock issued upon the exercise of Stock Options granted under the Plan.

20. Time of Granting or Allotment

The effective date of granting of any Stock Option or stock appreciation right or the allotment of restricted stock

pursuant to the Plan shall be the date specified by the Committee at the time it awards such Option or stock appreciation right or restricted stock, provided that such date shall not be prior to such date of award. The Committee shall promptly notify the recipient of an award and a written agreement in form specified by the Committee shall promptly be duly executed and delivered by or on behalf of the Corporation and the recipient. Each such agreement, and any amendment thereof, shall contain such terms and conditions as the Committee, in its sole discretion, shall determine, including, in the case of any such agreement relating to an Incentive Option, any terms and conditions which the Committee shall determine are necessary or may be desirable in order to qualify such Incentive Option as an incentive stock option within the meaning of Section 422A of the Code and any applicable regulations thereunder adopted by the Treasury Department. The Committee shall have the right to terminate an award if the written agreement is not signed by the recipient and returned to the Corporation within 30 days after the delivery thereof to the recipient.

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21. Government and Stock Exchange Regulations

The Plan, and the granting and exercise of Options and stock appreciation rights and the allotment of restricted stock thereunder, and the obligation of the Corporation to sell and deliver shares under the Plan shall be subject to all applicable governmental laws, rules and regulations, and to such approvals by any governmental agencies as may then be required, and shall also be subject to all applicable rules and regulations of any stock exchange upon which the Common Stock of the Corporation may then be listed.

22. Amendment and Termination

Unless the Plan shall theretofore have been terminated as hereinafter provided, the Plan shall terminate on, and no Stock Option or stock appreciation right shall be granted and no restricted stock shall be allotted after December 31, 1999; however, awards theretofore made may extend beyond that date. The Plan may be terminated, modified or amended by the stockholders of the Corporation. The Board of Directors of the Corporation may also terminate the Plan at any time and may modify or amend the Plan in such respects as it shall deem advisable, including any amendment which the Board of Directors may deem necessary in order to insure that the Incentive Options granted hereunder shall qualify as incentive stock options within the meaning of Section 422A of the Code and any regulations thereunder adopted by the Treasury Department; provided, however, that the Board of



Directors may not, without further approval by the holders of outstanding shares of the Corporation having a majority of the general voting power (i) increase the maximum number of shares as to which Options or stock appreciation rights may be granted or restricted stock may be allotted under the Plan except as provided in paragraph 17, (ii) materially increase the benefits accruing to participants under the Plan, (iii) permit any member of the Committee to become eligible for benefits under the Plan, (iv) extend the term of the Plan or the maximum period during which any Option or stock appreciation right may be exercised, or (v) change the provisions governing eligibility of employees to participate in the Plan. No termination or modification or amendment of the Plan may, without the consent of the employee to whom any Option or stock appreciation right shall theretofore have been granted or to whom restricted stock shall have been allotted, adversely affect the rights of such employee under such Option, stock appreciation right or allotment of restricted stock. With the consent of the employee to whom such Option or stock appreciation right was granted or to whom such restricted stock was allotted, an outstanding Option or stock appreciation right or allotment of restricted stock may be modified or amended by the Committee in such manner as it may deem appropriate consistent with the requirements of this Plan applicable to a new grant of an Option or stock appreciation right or a new allotment of restricted stock on the date of modification or amendment and, with respect to Incentive Options, consistent with the applicable provisions of the Code and regulations thereunder adopted by the Treasury Department.

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## 23. Adoption

This Plan shall become effective upon its adoption by the favorable vote of the holders of a majority of the outstanding shares of Common Stock of the Corporation.

EXHIBIT 5.1

ARTER, HADDEN, JOHNSON & BROMBERG  
1717 Main Street, Suite 4100  
Dallas, Texas 75201  
214/761-2100  
Facsimile 214/741-7139

July 27, 1995

Temtex Industries, Inc.  
3010 LBJ Freeway, Suite 650  
Dallas, Texas 75234

Re: Temtex Industries, Inc.  
Registration Statement on Form S-8

Subject: Additional Shares Reserved Under 1990 Stock Plan For  
Key Employees of Temtex Industries, Inc. and its  
Subsidiaries

Gentlemen:

We have acted as counsel to Temtex Industries, Inc., a Delaware corporation (the "Company"), in connection with the preparation of the Registration Statement on Form S-8 (the "Registration Statement") to be filed with the Securities and Exchange Commission on or about July 28, 1995, under the Securities Act of 1933, as amended (the "Securities Act"), relating to an additional 100,000 shares of the \$0.20 par value common stock (the "Common Stock") of the Company that may be issued under the 1990 Stock Plan For Key Employees of Temtex Industries, Inc. and its Subsidiaries (the "Plan") either as a result of the exercise of stock options ("Options") or allotted as restricted stock ("Restricted Stock").

You have requested the opinion of this firm with respect to certain legal aspects of the Registration Statement. In connection therewith, we have examined and relied upon the original, or copies

identified to our satisfaction, of (1) the Certificate of Incorporation and the Bylaws of the Company, as both have been amended and restated; (2) minutes and records of the corporate proceedings of the Company with respect to the Plan, the Registration Statement and related matters; (3) the Registration Statement and exhibits thereto, including the Plan, as amended; and (4) that Registration Statement on Form S-8 filed with the Securities and Exchange Commission on January 30, 1995 (Reg. No. 33-88980) and incorporated by reference into the Registration Statement; and (5) such other documents and instruments as we have

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deemed necessary for the expression of the opinions herein contained. In making the foregoing examinations, we have assumed the genuineness of all signatures and the authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us as certified or photostatic copies. We understand that as of the date hereof, no shares of Restricted Stock have been issued under the Plan. As to various questions of fact material to this opinion, and as to the content and form of the Certificate of Incorporation, the Bylaws, minutes, records, resolutions and other documents or writings of the Company, we have relied, to the extent we deem reasonably appropriate, upon representations or certificates of officers or directors of the Company and upon documents, records and instruments furnished to us by the Company, without independent check or verification of their accuracy.

Based upon our examination, consideration of, and reliance on the documents and other matters described above, and subject to the comments and exceptions noted below, we are of the opinion that, assuming (i) the outstanding Options were duly granted and the Options to be granted in the future will be duly granted, both in accordance with the terms of the Plan, (ii) the shares of Restricted Stock to be granted in the future, if any, will be duly granted in accordance with the terms of the Plan and the Board of Directors will determine that the value paid by the recipient exceeds the aggregate par value of the Restricted Stock issued, (iii) the Company maintains an adequate number of authorized but unissued shares and/or treasury shares of Common Stock available for issuance to those persons who exercise Options granted under the Plan and (iv) the consideration for the shares of Common Stock issuable upon the exercise of such Options is actually received by the Company as provided in the Plan and the particular option agreement and such consideration exceeds the par value of such shares, then the shares of Common Stock issued under and in accordance with the terms of the Plan will be duly and validly issued, fully paid and nonassessable.

We bring to your attention the fact that this legal opinion is an expression of professional judgment and not a guaranty of result. Further, this opinion is rendered as of the date hereof, and we undertake no, and hereby disclaim any, obligation to advise you of any changes in or new developments that might affect any matters or opinions set forth herein.

This opinion is limited in all respects to the General Corporation Law of the State of Delaware as in effect on the date hereof; however, we are not members of the Bar of the State of Delaware and our knowledge of its General Corporation Law is derived from a reading of the most recent compilation of that statute available to us without consideration of any judicial or administrative interpretations thereof.

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We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to references to our firm included in or made a part of the Registration Statement. In giving this consent, we do not admit that we come within the category of person whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

ARTER, HADDEN, JOHNSON & BROMBERG

CONSENT OF ERNST & YOUNG LLP

EXHIBIT 23.2

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 1990 Stock Plan for Key Employees of Temtex Industries, Inc. and Its Subsidiaries of our report dated October 5, 1994, with respect to the consolidated financial statements and schedules of Temtex Industries, Inc. included in its Annual Report (Form 10-K) for the year ended August 31, 1994 filed with the Securities and Exchange Commission.

ERNST & YOUNG LLP

Dallas, Texas  
July 25, 1995