

TERMS AND CONDITIONS OF USE PROTEMPO B.V.

Clause 1: General

1. These Conditions apply to any offer and quotation of and agreement with Protempo B.V., hereinafter referred to as: 'Protempo' unless these Conditions are explicitly deviated from in writing in the agreement.
2. The applicability of any purchase or other conditions of Protempo B.V.'s counterparty, hereinafter referred to as 'the Buyer', are explicitly rejected.
3. If one or more conditions in these General Terms and Conditions are at any time wholly or partly invalid or are annulled, the remainder of the provisions in these General Terms and Conditions will remain fully effective. In this event Protempo and the Buyer will consult each other in order to agree new provisions to replace the invalid or annulled provisions thereby taking into account the aim and purport of the original provisions as much as possible.

Clause 2: Offers, quotations and orders

1. All prices and conditions specified in general offers or catalogues or on Protempo's website are without obligation unless it is explicitly stated in writing that the said prices and conditions are guaranteed for a certain period.
2. Protempo has taken due care in composing its general offers, website and catalogues. Nevertheless, faults might occur in them or (the composition of) the products might have changed and/or the products might not be in stock. Protempo will not be liable for any faults and deviations in images, drawings and descriptions of products in general offers, the website or catalogues.
3. Protempo cannot be held to their offers or quotations if the Buyer could reasonably understand that the offer or quotation or any part of them includes an obvious error or mistake. Only an individual offer tailored to the specific Buyer can be considered as an offer. An offer with a composite quotation is indivisible so that only the offer in its entirety can be accepted.
4. If the acceptance of an offer or a quotation by the Buyer deviates (whether or not in minor aspects) from the offer included in the offer or the quotation, Protempo will not be bound by it unless otherwise indicated by Protempo.
5. Orders of Buyers will only become binding on Protempo after they have been confirmed in writing by Protempo. Verbal statements by Protempo's employees can only be considered as an indication from which no rights can be derived.
6. Orders confirmed by Protempo will be supplied at the prices quoted in the order confirmation, but Protempo reserves the right to increase the prices if, between the time of the order confirmation and the delivery, the procurement prices, taxes, levies, transport costs, storage costs and/or insurance expenses payable by Protempo have increased.
7. All prices offered and quoted are excluding VAT, other levies by the authorities and shipping and administration costs, unless otherwise indicated.

Clause 3: Discount

1. Protempo can offer a specific Buyer a standard discount on the gross goods value of future orders. Only a written notice from Protempo to this end creates the right to that standard discount. Protempo is at all times entitled to withdraw, change, suspend or attach conditions to this standard discount. In all cases the conditions as appear in paragraphs 2 to 5 of this Clause are attached to the standard discount.
2. With regard to deliveries with a gross goods value up to €67.50 there is no entitlement to the standard discount or any other discount.
3. With regard to deliveries with a gross goods value of €67.50 up to €202.50 Protempo reserves the right to reduce the agreed discount by 15% (percentage points).
4. Protempo in all cases reserves the right to reduce the agreed discount by 15% (percentage points) with regard to any product if the standard packaging of that product has not been ordered.

5. If reduced discounts are applicable, 15% will only be deducted once. If an order is placed in one go but it has to be delivered to various locations and/or in separate quantities, each despatch will be considered as a separate order with regard to the calculation of the discount.
6. The concept of gross goods value is considered to be the sales price (excluding: VAT, transport costs and other additional costs) as represented in the gross price list applied by Protempo at any time.

Clause 4: performance of agreements

1. Delivery in the Netherlands and Belgium is free domicile by way of a means of transport to be determined by Protempo. Contrary to the foregoing, Protempo reserves the right to charge a surcharge for transport costs with regard to deliveries up to €500.00 gross goods value. If delivery outside the Netherlands or Belgium is required, the transport costs will always be charged unless the contrary has explicitly been agreed in writing.
2. All delivery dates agreed with Protempo will be approximate and can never be considered as a final deadline unless explicitly agreed otherwise. Exceeding the delivery period will never give a right to dissolve the agreement formed or to any compensation even if the period must indeed be considered as a final deadline.
3. If Protempo needs data from the Buyer for the performance of the agreement, the performance period will only commence after the Buyer has provided the data accurately and completely to Protempo.
4. The Buyer is obliged to buy the items at the moment that they are made available to him.
5. If the Buyer refuses to take receipt of the proffered deliveries or fails to provide information or instructions required for the delivery or refuses to furnish proper security requested in advance for the payment of the invoice with additional costs, Protempo's obligation to deliver the goods will lapse notwithstanding the Buyer's obligation to pay the invoice for the goods not received.
6. If it has been agreed that goods are to be delivered on call and/or for a certain period and the Buyer has not made use of this facility within the agreed period, Protempo's obligation to deliver the goods will lapse notwithstanding the Buyer's obligation to pay the invoice with regard to the goods not received.
7. Protempo is entitled to carry out the agreement in various stages/deliveries and to invoice the part thus carried out separately.
8. The Buyer is not entitled to use the drawings, descriptions, illustrations and technical data supplied by Protempo or have them used in order to manufacture similar products or have them manufactured.

Clause 5: Payment and default

1. In principle the Buyer will receive the invoice from Protempo practically at the same time as the delivery. However, Protempo will at all times be entitled to demand (cash) payment in advance or proper security in advance for the payment of the invoice with additional costs.
2. Protempo is entitled to increase the amount of each invoice by a 2% credit limitation surcharge calculated on the total amount of the goods, increased by carriage and administration costs, which credit limitation surcharge the Buyer can deduct from the amount he owes if payment takes place within 10 days after the invoice date.
3. Any invocation of settlement, suspension, discount or set-off against an invoice of Protempo is excluded.
4. Unless otherwise agreed the payment period of Protempo's invoices is always 30 days calculated from the invoice date, which period must be considered as a final deadline which, if exceeded, renders the Buyer in default without a notice of default being required. Should a Buyer be in default with regard to one invoice, from that date onwards he is also considered to be in default with regard to other outstanding invoices the payment period of which has not yet expired.
5. From the date of the default the Buyer will owe to Protempo interest for overdue payment amounting to 1.5% per (part) month, to be calculated on the outstanding invoice balance.

6. If the Buyer fails to fulfil his obligations (in time) or is in default of this, all the reasonable costs of obtaining extrajudicial payment will be at the expense of the Buyer. These costs amount to 15% of the invoice amount or, at Protempo's discretion, the costs actually incurred.
7. Payments made by the Buyer will be deducted from the amount due in the order of Article 6:44 of the Dutch Civil Code even if the Buyer indicates a different allocation.

Clause 6: Termination and suspension of the agreement

1. Without a further notice of default or warning being required Protempo is entitled to suspend the performance of its obligations or dissolve the agreement, if:
 - the Buyer does not, not fully or not timely fulfil the obligations under the agreement (including the obligation to pay within due time);
 - circumstances come to the notice of Protempo after the agreement has been formed giving good reason to fear that the Buyer will not fulfil his obligations;
 - the Buyer was requested on entering into the agreement to furnish security for the performance of his obligations under the agreement and this security has not been forthcoming or is insufficient;
 - in the event of a liquidation, a moratorium or an application for a moratorium, a debt rescheduling scheme or bankruptcy, or an attachment at the expense of the Buyer- insofar as the attachment has not been lifted within three months - or a different circumstance by which the Buyer loses the free disposal of his assets.
2. Protempo will also be entitled to dissolve the agreement if circumstances arise which are of a nature such that performance of the agreement is impossible or that maintaining the agreement unchanged cannot reasonably be required from Protempo.
3. If the agreement is dissolved or suspended by Protempo, Protempo's claims on the Buyer will become immediately due and payable. The Buyer is obliged to compensate Protempo for the loss arising on the part of Protempo as a result of the dissolution or suspension. Protempo will never be obliged to compensate loss and costs arising on the part of the Buyer as a result of the dissolution or suspension.

Clause 7: Complaints and liability

1. Except for cases of hidden defects, complaints will only be dealt with and complaints can only lead to compensation if they have been reported in writing to Protempo within eight days after the delivery of the goods. In the event of a hidden defect this should be reported in writing within eight days after this defect has been discovered.
2. Any right to complain - also that due to a hidden defect - will lapse as soon as the Buyer has had the goods processed, has had them incorporated into a larger whole or has disposed of them.
3. If the composition of a product has changed compared to previous deliveries, but the new composition still meets its intended purpose, it will not constitute a right to complain. A deviation of 5% with regard to the quantity supplied does not create a right to complain.
4. Protempo will not be liable for the manner in which the Buyer uses or applies the goods delivered by Protempo unless this has been recommended in writing by Protempo and the respective products appear to be unsuitable for the application recommended in writing by Protempo. Any liability of Protempo will lapse if the data and information provided by the Buyer on the basis of which Protempo gave the recommendation, appears to be inaccurate, incomplete and/or faulty.
5. Insofar as delivered products are not based on the technical specifications of the Buyer, Protempo will make the delivery in accordance with the drawings, descriptions, illustrations and technical data supplied by Protempo themselves. Should there be any deviations in these compared with reality, this will not create a right to complain.

6. Should a complaint be well-founded, Protempo will be free either to replace or repair the product without any charge, or to make a credit entry insofar as defective products have been delivered or in case of short delivery, or to pay alternative compensation, all this at the discretion of Protempo. In the event of replacement or a credit entry the Buyer will be obliged to return the replaced or credited goods to Protempo.
7. In the event of an unfounded complaint the costs caused by this, including the investigative costs, will be at the expense of the Buyer.
8. If Protempo would be liable in any way whatsoever for a loss of the Buyer, the amount of its obligation to pay compensation will in all cases be limited to not more than the invoiced amount of the goods to which the loss relates and then only insofar as Protempo is able to recover the amount of the loss from its supplier or insurer.
9. Protempo will never be liable for indirect losses including consequential losses, lost profits, missed savings and losses caused by operational delays.
10. The Buyer will only be entitled to return the delivered products if Protempo has given its consent to this end in writing in advance. Only in that case will the returned goods be credited, provided the returned goods are in a good condition and in their original packaging, less a handling fee of 10% of the amount to be credited accruing to Protempo.

Clause 8: Retention of title

1. All goods delivered by Protempo remain the property of Protempo until the moment at which the Buyer has paid all outstanding invoices and other claims of Protempo.
2. The Buyer is prohibited from disposing of, pledging or in other ways encumbering the goods covered by the retention of title pursuant to paragraph 1. The Buyer should always do everything that can reasonably be expected of him in order to safeguard the ownership rights of Protempo.
3. If third parties seize items covered by the retention of title or want to establish rights or have rights exercised on them, the Buyer will be obliged to inform Protempo of this immediately.
4. The Buyer undertakes to take out insurance on the items supplied under the retention of title, covering them against damage by fire, explosion and water as well as against theft, to maintain this insurance and to provide the policy of this insurance to Protempo for inspection at the first request. In the event of any insurance payments, Protempo will be entitled to these payments. Insofar as this is necessary the Buyer undertakes now for then to cooperate with anything that might (appear to) be necessary or desirable in that connection.
5. The Buyer gives now for then its unconditional and irrevocable consent to Protempo and third parties to be designated by it to access all those places where the properties of Protempo are situated and to take those items back in connection with exercising its retention of title.

Clause 9: Final stipulations

1. All agreements between Protempo and the Buyer are exclusively governed by Dutch law.
2. Any dispute and any claim in connection with the agreement between Protempo and the Buyer, or with any agreements previously entered into by Protempo and the Buyer, or with further agreements which might arise from it, will be settled by the District Court in Arnhem or, when the Subdistrict Court has jurisdiction, by the District Court of Arnhem, Subdistrict Sector located in Nijmegen, all this unless mandatory jurisdiction rules would preclude this choice.
3. In case of any conflict between the Dutch text of these General Terms and Conditions and any translation thereof, the Dutch text always prevails.