

Art. 1. General

1. These conditions apply to all offers and agreements between PROMAK, Chamber of Commerce number 51163012, hereinafter referred to as "Promak", and any contractual other party, hereinafter referred to as the Client, unless the parties have expressly deviated from these conditions in writing.
2. The present conditions also apply to agreements for whose implementation Promak has engaged third parties.
3. The applicability of any purchase conditions or other conditions of the Client is expressly rejected.
4. If one or more provisions of these general terms and conditions are void or declared void in whole or in part at any time, the other provisions of these general terms and conditions will continue to apply in full. Promak and the Client will then consult in order to agree on new provisions to replace the provisions that are void or declared void, taking the aim and purport of the original provisions into account as much as possible.
5. In the event of uncertainties concerning the interpretation of one or more provisions of these general terms and conditions, interpretation should take place in the spirit of these provisions.
6. In case of a situation between the parties that is not regulated in these general terms and conditions, such a situation must be assessed in the spirit of these general terms and conditions.
7. If Promak does not demand strict compliance with these conditions at all times, such does not mean that its provisions do not apply or that Promak to any extent loses the right to demand strict compliance with the provisions of these conditions at a later moment or in other circumstances.

Art. 2 Offers

1. All offers made by Promak are without obligation, unless the offer includes a term for acceptance. If no term for acceptance is provided, no rights of any kind can be derived from the offer if the product to which the offer relates has become unavailable in the meantime.
2. Promak cannot be obliged to comply with its offers if the Client should reasonably be able to understand that the offers or part thereof include a clear mistake or clerical error.
3. The prices stated in the offer are exclusive of VAT and other government levies, any costs to be incurred within the context of the agreement, including travel and accommodation, dispatch and administration cost, unless otherwise indicated.
4. If the acceptance deviates from the offer as such, as regards points of minor importance or otherwise, Promak will not be bound by such acceptance. In such cases, the agreement will not be concluded in accordance with this deviating acceptance, unless Promak expressly states otherwise.
5. A combined quotation does not oblige Promak to perform part of the assignment against a proportionate part of the price that has been quoted. Offers do not apply automatically to future orders.
6. Brochures, images, models, colour and other samples and other promotional materials made available by Promak to the Client are only intended as a general indication of the goods or services to be delivered. Promak will have the right to deliver to the Client goods and services that deviate from these promotional articles in a general sense without being in default.

Art. 3 Terms

1. The agreement between Promak and the Client is concluded for an indefinite period, unless otherwise follows from the nature of the agreement or the parties expressly agree otherwise in writing.
2. If a term has been agreed or indicated for the completion of certain activities or for the delivery of certain goods, such will never constitute a strict deadline. In the event a term is exceeded, the Client must give Promak written notice of default. Promak must be offered a reasonable term to comply as yet with the agreement.

Art. 4 Performance

1. Promak will perform the agreement to the best of its knowledge and abilities and in accordance with high standards. Such on the basis of the currently known state of the art.
2. Promak has the right to decide to have activities performed by third parties.
3. The applicability of Article 7:404, 7:407 paragraph 2 and 7:409 of the Dutch Civil Code is expressly excluded.
4. In the event Promak or third parties engaged by Promak within the context of the assignment perform activities at the Client's location or at a location indicated by the Client, the Client will arrange for the facilities required by those employees within reason, free of charge.
5. The Client will ensure that all data which Promak states to be necessary or in respect of which the Client can reasonably be taken to understand that they are necessary for the performance of the agreement, are provided to Promak in a timely manner. If the data required for the performance of the agreement are not provided to Promak in a timely manner, Promak will have the right to suspend performance of the agreement and/or charge the additional costs arising from the delay to the Client in accordance with the rates that apply at that time. The term for implementation will not commence until after the Client has made the data available to Promak.
6. If the Client cancels all or part of an order that has been placed, the activities that were performed and the goods that were ordered or completed in connection with it, increased by any supply, removal and delivery costs thereof and the working time reserved for the performance of the agreement, will be charged to the Client in full.

Art. 5 Delivery.

1. Delivery will take place ex works, unless agreed otherwise.
2. The Client is obliged to take receipt of the goods at the moment they are made available to him/her. If the Client refuses to take delivery or is negligent as regards the provision of information or instructions that are necessary for the delivery, Promak will have the right to store the goods for the account and risk of the Client. The risk of loss, damage or depreciation passes to the Client at the moment at which the goods are available to the Client.
3. Promak has the right to perform the agreement in phases and to deliver and/or invoice the part thus performed separately.
4. If the agreement is performed or delivered in phases, Promak will have the right to suspend performance or delivery of those parts that are part of a subsequent phase until the Client has approved the results of the previous phase in writing.

Art. 6 Changes to the agreement.

1. If it becomes clear during the performance of the agreement that it is necessary for its proper performance to amend or supplement it, the parties will consult with each other concerning adjustment of the agreement in a timely manner. The Client accepts the possibility of a change to the agreement, including changes to price, term of implementation and other preconditions.
2. If the agreement is changed or any addition is made to it, Promak will have the right not to implement such changes until the Client has agreed in writing to the price and other conditions of performance, including the moment at which the change will be implemented to be determined at that time. Failure to immediately perform a changed agreement does not constitute breach of contract on the part of Promak and does not constitute a ground for dissolving the agreement for the Client.
3. Without prejudice to the provisions of paragraph 1, Promak will have the right, without being in default, to reject a request for a change to the agreement if this has negative consequences for Promak. What constitutes a negative consequence in the given circumstances will be determined independently by Promak.
4. If Promak agrees a fixed fee or a fixed price with the Client, Promak will nevertheless have the right at all times to increase this fee or this price without the Client having the right in such cases to dissolve the agreement for this reason, if the price increase follows from a right or obligation pursuant to legislation or regulations or is caused by an increase in the price of raw materials, wages etc. or is based on other grounds that were not reasonably foreseeable when the agreement was concluded.

Art. 7 Suspension, dissolution and premature termination

1. Promak has the right inter alia to suspend compliance with the obligations or to dissolve the agreement, if
 - a: the Client fails to comply with obligations arising from the agreement or fails to comply with them in full or in a timely manner,
 - b: circumstances that have become known to Promak after conclusion of the agreement give good reason for fearing that the Client will not comply with the obligations,
 - c: the Client was requested to provide security for compliance with its obligations arising from the agreement when the agreement was concluded and this security is not provided or is insufficient,
 - d: if as a result of delay on the part of the Client Promak can no longer be expected to comply with the agreement against the conditions that were originally agreed.
2. Promak furthermore has the right to dissolve the agreement if circumstances occur such that performance of the agreement is impossible or such unaltered maintenance of the agreement cannot be expected of Promak within reason.
3. Promak's claims against the Client will become immediately due and payable if the agreement is dissolved. Promak will retain its claims arising from the law and the agreement if it suspends compliance with the obligations.
4. If Promak suspends or dissolves, it will not be obliged in any way to compensate damage and costs that have arisen in any way as a result.
5. In case of dissolution, Promak will be entitled to compensation of damage, including the costs that arise directly and indirectly as a result.
6. If, following notice of termination or dissolution of the agreement, the agreement is continued by a third party at the request of the Client and such requires transfer and/or instruction by Promak to the Client or to this third party, the Client will compensate the related costs to Promak.
7. In case of liquidation, an (application for a) moratorium or bankruptcy, attachment—if and to the extent the attachment is not lifted within three months—levied against the Client, a debt management scheme or other circumstances as a result of which the Client can no longer dispose freely of its assets, Promak will be free to dissolve the agreement, without any obligation on its part to pay any damages or compensation. Promak's claims against the Client will become immediately due and payable in that case.

Art. 8 Force majeure

1. Promak is not required to comply with any obligation towards the Client if it is prevented from doing so as a result of circumstances that are not attributable to fault and should not be for its account pursuant to the law, a legal act or generally accepted practice.
2. In these general terms and conditions, force majeure is defined, in addition to the definition in law and case law, as all outside causes, foreseen and unforeseen, that are beyond Promak's control, but which prevent Promak from complying with its obligations, including strikes at Promak or at third parties. Promak also has the right to invoke force majeure if the circumstances that prevent (further) compliance with the agreement occur after Promak should have complied with its obligation.
3. Promak has the right to suspend the obligations arising from the agreement during the period of force majeure. Each party has the right to dissolve the agreement if this period lasts longer than two months, without being obliged to compensate damage to the other party.
4. To the extent Promak has complied or will be able to comply with part of its obligations arising from the agreement at the moment force majeure occurs, and the part that has been complied with or that can be complied with has independent value, Promak has the right to invoice separately the part that has already been complied or that can be complied with. The Client is obliged to pay this invoice as if it regarded a separate agreement.

Art. 9 Payment and collection costs

1. Payment must always be made within 14 days after the invoice date in a manner to be indicated by Promak and in the currency indicated on the invoice. Promak has the right to send invoices periodically.
2. The Client will be in default by operation of law if the Client fails to pay the invoice on time. In such cases, the Client will owe 1% interest per month, unless statutory interest is higher, in which case statutory interest will be payable. The interest on the payable amount will be calculated from the moment the Client is in default until the moment of payment of the full amount that is owed.

3. Promak has the right to have the payments made by the Client first serve to reduce the costs, then to reduce the interest that has fallen due and finally to reduce the principal sum and the accruing interest. Promak has the right to refuse an offer of payment without being in default if the Client designates a different order for the allocation of the payment. Promak has the right to refuse full repayment of the principal if the interest that is due and accruing and the collection costs are not paid at the same time.
4. The Client never has the right to set off what he/she owes to Promak. Objections to the amount of an invoice do not suspend the payment obligation.
5. If the Client is in default or fails to comply with his/her obligations or fails to do so on time, the judicial and extrajudicial collection and other costs, including lawyer's fees, which have actually been incurred to obtain an out-of-court settlement will be for the account of the Client. After notification, the Client will owe 1% interest per month on the collection and other costs that are payable.
6. In accordance with the provisions of Article 2:346 paragraph 1e, Promak at all times has the right to submit an application for an inquiry into the Client and the group within which he/she operates.

Art. 10 Retention of title

1. Title to the goods delivered by Promak does not pass to the Client until after Promak has received the entire performance with respect to the goods that were delivered as well as all other performances Promak can claim from the Client pursuant to other obligations.
2. In the event the Client fails to comply with his/her obligations or in the event Promak has a well-founded fear that the Client will fail to do so, Promak has the right to retrieve the goods delivered subject to retention of title from the Client or from third parties that keep these goods for the Client. For this purpose, the Client authorises Promak in advance to enter his/her grounds, buildings and locations as well as the grounds, buildings and locations of third parties that hold the goods on behalf of the Client. The Client will compensate to Promak all transport and storage costs involved in such retrieval upon request.
3. The Client does not have the right to sell the products subject to Promak's retention of title to third parties, to encumber them or otherwise dispose of them, unless this takes place within the context of its customary business operations and the invoices that relate to the relevant goods (and any interest and cost obligations that may arise therefrom) have been paid in full; the parties expressly intend for the aforementioned prohibition to be binding to third parties.
4. The Client undertakes to sufficiently insure and keep sufficiently insured the goods that are subject to Promak's retention of title. The Client will store Promak's goods separately from other goods and mark them as the property of Promak. If the Client has failed to do so, the assumption will apply between the parties that the quantity of goods of the same type that are present at the Client belongs to Promak.
5. If third parties levy an attachment against goods that are subject to Promak's retention of title or if the Client loses the right of disposition or the power of disposal concerning the goods other than in the manner referred to in paragraph 3, the Client will be obliged to inform Promak thereof immediately.
6. At Promak's first request, the Client will pledge to Promak in accordance with Article 3:239 of the Dutch Civil Code the Client's claims against his/her purchaser(s) and insurer(s) with respect to the goods delivered subject to the retention of title.
7. The Client is obliged to cooperate in the provisions of paragraphs 2, 4, 5 and 6 of this article subject to a penalty of 10% of the value of the relevant goods for each day or for part of that day he/she refuses this cooperation. This penalty is not liable to court mitigation and applies in addition to Promak's right to recover from the buyer the damage it has actually sustained.

Art. 11 Guarantees, investigation and complaints, prescription period

1. The goods to be delivered by Promak comply with the customary requirements and standards that may be imposed in respect thereof within reason at the moment of delivery and for which they are intended in case of normal use in the Netherlands. The guarantee referred to in this article applies to goods that are intended to be used in the Netherlands. In case of use outside the Netherlands, the Client will be obliged to verify whether the goods are suitable for use at that location and comply with the relevant conditions. Promak may provide different guarantees and impose different conditions with respect to the goods to be delivered or the activities to be performed.
2. The guarantee referred to in paragraph 1 of this article applies for a period of one year after delivery, unless otherwise follows from the nature of the goods that have been delivered or the parties have agreed otherwise. If the guarantee issued by Promak concerns a good that was produced by a third party, the guarantee will be limited to the guarantee that is issued by the producer of the good, unless stated otherwise.
3. All guarantees lapse if a defect results or arises from inexpert or improper use thereof or use after the best-before date, incorrect storage or maintenance thereto by the Client and/or third parties if, without the written approval of Promak, the Client or third parties have made changes to the good or have attempted to do so, other goods were attached thereto that should not have been attached thereto or if they were processed or modified in a manner other than the prescribed manner. The Client is not entitled to any guarantee if the defect arises or results from circumstances that are beyond Promak's control, including weather conditions, such as but not limited to extreme rains or temperatures etc.
4. The Client is obliged to inspect the goods that have been delivered or have them inspected immediately after the moment the goods have been made available to him/her or the relevant activities have been performed. The Client is obliged to check in this regard whether the quality and/or the quantity of the goods delivered correspond to what was agreed and comply with the requirements agreed by the parties in that regard. Promak must be notified in writing of any visible defects within seven days after delivery. Promak must be notified in writing of any invisible defects immediately after they are discovered but in any event within at most fourteen days. The notification must include a description of the defect that is as detailed as possible so that Promak is able to respond adequately. The Client must give Promak the opportunity to investigate a complaint or have it investigated.
5. If the Client submits a complaint in a timely manner, such will not suspend his/her payment obligation. In such cases, the Client will also remain obliged to take receipt of and pay for the other goods that were ordered and for what he/she instructed Promak to do.
6. In the event a defect is notified outside the terms referred to in paragraph 4, the Client will no longer be entitled to repair, replacement or compensation.
7. If it is established that a good is defective and a complaint in that regard has been submitted in a timely manner, Promak will replace or arrange for repair of the defective good within a reasonable term or pay the Client a replacement compensation after receiving it back or, if returning the good is not possible within reason, after a written notification of the defect by the Client. In case of replacement, the Client will be obliged to return the replaced good to Promak and to provide ownership thereof to Promak.
8. If it is established that a complaint is unfounded, the costs on the part of Promak that have arisen as a result, including costs of investigation, will be fully for the Client's account.
9. After the guarantee period has ended, all costs of repair or replacement, including administration and dispatch costs and call-out charges, will be charged to the Client by Promak.
10. In derogation from the statutory prescription periods, the prescription period of all claims and defences against Promak and the third parties involved in the performance of an agreement by Promak, will be one year.

Art. 12 Liability

1. If Promak proves to be liable, such liability will be limited to what is regulated in this provision.
2. Promak is not liable for damage of any kind that has arisen because Promak worked from incorrect and/or incomplete information that was provided by or on behalf of the Client.
3. If Promak should prove liable for any damage, Promak's liability will be limited to the amount paid by Promak's insurer in the relevant case.
4. In the event Promak's insurance does not apply or does not make payment for any reason, Promak's liability will always be limited in any event to at most the invoice value of the order or, at any rate, that part of the order to which the notice of liability relates.
5. Promak is only liable for the Client's direct damage. Direct damage is understood to mean exclusively:
 - a: the reasonable costs to determine the cause and extent of the damage to the extent the determination relates to damage within the meaning of these conditions
 - b: any reasonable costs incurred to have Promak's defective performance comply with the agreement to the extent these costs can be attributed to Promak and
 - c: the reasonable costs incurred to prevent or limit damage, to the extent the Client demonstrates that these costs have led to a limitation of the direct damage as referred to in these general terms and conditions.
6. Promak is never liable for indirect damage, including third-party damage, consequential damage, lost profit, missed savings and damage resulting from business interruption.
7. The limitations of liability included in this article do not apply if the damage is attributable to intent or gross negligence on the part of Promak.

Art. 13 Indemnification

1. The Client indemnifies Promak against any claims from third parties who sustain damage in connection with the performance of the agreement the cause of which is attributable to a party other than Promak. If Promak is held liable by third parties in that regard, the Client will be obliged to assist Promak both in and out of court and to do everything that may be expected of him/her without delay. If the Client fails to implement adequate measures, Promak will have the right to do so itself without giving notice of default. All costs and damage on the part of Promak and third parties that arise as a result thereof are fully for the account and risk of the Client.

Art. 14 Intellectual property

1. Promak reserves the rights and powers that it has pursuant to the Copyright Act and other legislation and regulations pertaining to intellectual property. Promak has the right to use its knowledge that will have increased as a result of the performance of an agreement for other purposes as well, to the extent no strictly confidential information of the Client is disclosed to third parties in this regard.

Art. 15 Applicable law and disputes

1. All legal relationships to which Promak is a party are governed exclusively by Dutch law, also if all or part of an obligation is complied with abroad or if the other party involved in the legal relationship has its place of business there. The applicability of the Vienna Sales Convention is excluded.
2. The courts where Promak has its place of business have exclusive jurisdiction to hear disputes, unless the law provides otherwise in a mandatory manner. Promak nevertheless has the right to submit the dispute to the court that is competent according to the law.
3. The parties will not apply to the courts until after they have made every effort to settle the dispute in mutual consultation.