

# General terms of delivery and sale Poly Temp Scientific



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# General terms of delivery and sale Poly Temp Scientific B.V.

## 1. Applicability

1.1 These general terms and conditions of sale and delivery (hereinafter “Conditions”) apply to all contracts relating to the sale and delivery of products of Poly Temp Scientific B.V (all hereinafter “Poly Temp”) and her customers.

1.2 Any general terms and conditions of the customer are valid only if they have been specifically accepted in writing by Poly Temp.

1.3 Should any article of these conditions become not applicable or invalid for any reason whatsoever, all other articles of same conditions will remain in force

## 2. Offers

2.1 Unless agreed otherwise in writing, all offers Poly Temp has made to the customer are free of obligation and valid for a period of 14 days after the date of dispatch to the customer, but until Poly Temp receives the acceptance of same, they may be revoked by Poly Temp at any time.

2.2 The prices in an offer are exclusive of VAT unless stated otherwise.

2.3 All offers are based on performance under normal circumstances and during Poly Temp’s normal working hours.

2.4 A delivery or service order, including the acceptance of an offer, must be in writing and include the information and documentation that Poly Temp needs to start preparing the order and complete it adequately. The information needed includes the consumer’s specific quality requirements, such as the consumer’s intended use of the goods of which Poly Temp would not reasonably be expected to know the quality requirements. If such information is not provided to Poly Temp, the suitability of the goods in terms of these requirements is at the customers’ risk.

## 3. Agreement

3.1 An agreement with Poly Temp shall only be concluded if Poly Temp has confirmed same in writing by means of an order confirmation.

3.2 The substance of the agreement between the parties shall be determined exclusively by the statements made regarding the agreement in the order confirmation and in these terms and conditions.

#### **4. Delivery periods**

4.1 If a delivery time is agreed upon, this commences on the day of written confirmation by Poly Temp of the order given by the customer. If it is arranged that the customer must pay a part of the price at the time of the giving of the order, the delivery period commences on the day of receipt of the payment due.

4.2 Indications of delivery periods are approximations. Under no circumstances may delivery periods indicated by Poly Temp be regarded as a strict deadline unless parties explicitly agree otherwise.

4.3 The delivery time shall begin to run after the agreement has been concluded, all the data and materials necessary for the commencement of performance of same are in the possessions of Poly Temp and any payment, insofar as same should be made by the customer at the time the agreement is concluded, has been made.

#### **5. Installation**

5.1 Unless explicitly otherwise agreed upon, the connection and putting into working order of the supplied goods will be performed by the customer in full compliance with the installation instructions. Poly Temp will neither be liable for damage which is caused by non compliance with installation instructions, nor for

- a. damages, malfunctions or failure from abuse, accident, fire, flood and the like;
- b. parts installed with the unit or used in connection with normal maintenance, such as cleaning or replacing air filters, refrigerant, tubing or thermostats;
- c. damages, malfunctions or failures caused by the use of any attachment, accessory or component not authorized by the manufacturer or Poly Temp; or
- d. units removed from the original installation location.

5.2 If it has been arranged that the installation shall be performed by Poly Temp, the customer will ensure the following at own expense:

- a. preparation of the place of installation with consideration for the instructions thereto of Poly Temp;
- b. the timely presence of all possible necessary permits and information which are necessary for the installation;
- c. the access of the personnel of Poly Temp at agreed upon periods of time to the areas where the installation must take place. Additionally, the customer must ensure that the installation can commence immediately and can be completed without interruption.
- d. the presence at the place of installation of a connection to the electric mains, in working order and of the agreed upon current.

5.3 All costs made by Poly Temp due to non-compliance by the customer of that which is specified in paragraph 2 of this article, may be charged to the customer by Poly Temp.

5.4 If it is agreed upon that the installation shall be performed by Poly Temp, Poly Temp can instruct its agent or a third party to carry out the installation.

## **6. Payment**

6.1 In so far as no other instalment period is specified in the order confirmation, payment of that which is due to Poly Temp must take place within thirty days from date of invoice or the date where upon payment has become demandable.

6.2 If payment is not made on time, Poly Temp is authorized to charge the customer an interest of 1% per month over the amount due. Proof of default or a demand note is not necessary.

6.3 If a customer defaults with any payment, it being from this agreement or being from another agreement between the customer and Poly Temp, all outstanding payments due to Poly Temp from this customer become due immediately to the full amount, disregarding the circumstances of delivery and/or installation. In this case Poly Temp can postpone further completion of orders and deliveries until all that is which is due is paid within a period stipulated by Poly Temp.

6.4 All amount charged to the customer must be paid without applying any discount or set off.

6.5 The customer is not entitled to set off any claim it may have against and claim of Poly Temp.

6.6 The customer is not entitled to suspend any of its obligations.

6.7 If a customer remains in default and the maximum period for payment as stipulated by Poly Temp has expired without payment having taken place, the customer is also required to pay the extra judicial collection fees of 15% of the total amount due, regardless of a possible ruling in the costs of a judicial recovery of the amount due.

6.8 Any payment made by the customer will first be applied to pay the interest and costs it owes and will then be deducted from the oldest outstanding claim / invoice.

## **7. Prices**

7.1 All the prices of products are in euros and exclusive of turnover tax, import duties and other taxes, duties and levies.

7.2 Unless otherwise stated, the price named in the order confirmation is ex works Poly Temp warehouse in Bolsward, The Netherlands, unless agreed different.

7.3 Transport from Poly Temp warehouse to the place of installation is at customer's own expense and risk.

7.4 Premium for the insurance of the transport to the address of the customer is not included in the price.

## **8. Inspection and acceptance**

8.1 The customer will inspect the delivered goods immediately after delivery of the machine(s) to the address agreed upon. Possible claims concerning damages, deficiencies or deviations of the supplied goods must be reported to Poly Temp in writing within eight days after delivery of the goods to the customer's premises.

8.2 All claims based upon externally obvious flaws, deficiencies and/or damage expire if these are not reported within eight days in the manner stipulated under paragraph 1 to Poly Temp, respectively the agent appointed by Poly Temp.

8.3 If the delivered goods are installed by Poly Temp, the customer will both put the delivered and installed equipment into operation and test it immediately after completion of the installation. Possible defects in the functioning of the installation must be reported in writing to Poly Temp within eight days after completion of the installation.

8.4 All claims based upon non-compliance of the installation with the agreed upon characteristics expire if these are not reported within thirty days in the manner stipulated under paragraph 8.3 to Poly Temp.

## **9. Risk**

9.1 Unless otherwise agreed upon, the risk for damage, loss or perishment of the supplied goods is transferred to the customer at the moment that the goods are delivered to the agreed upon address.

9.2 Regardless of that which is stipulated under paragraph 1 of this article, ownership of the delivered goods only transfers to the customer after the payments due to Poly Temp - including payments not on call - are completely settled with Poly Temp.

9.3 For as long as ownership of the supplied goods rests with Poly Temp in accordance with the stipulation in the previous paragraph, the customer has the obligation to treat these goods with due care, to maintain them and to insure them against the risks of damage, loss and/or perishment.

9.4 The customer is not authorized to alienate, hypothecate or grant third parties a right upon these goods in any form, as long as ownership of the supplied goods still rests with Poly Temp in accordance with that which is stipulated in paragraph 2 of this article.

9.5 The customer is under the obligation to clearly show to relevant third parties if and when such third parties appear to regard the goods as property of the customer that the ownership rights upon the delivered goods belong to Poly Temp.

9.6 The customer is required to inform Poly Temp immediately regarding possible filing of bankruptcy, filing of suspension of payment, arrest of the supplied goods and in general all measures or circumstances which might lead to endangerment of the ownership right of Poly Temp to the supplied goods.

9.7 The customer is liable to Poly Temp for all damages which Poly Temp may suffer as a result of non-compliance by the customer of any obligation under this article.

## **10. Guarantee and indemnification**

10.1 The liability of Poly Temp regarding defects of supplied goods, or regarding injury or damage to or loss of goods, is always limited to that stipulated in this article and will not exceed the cost of the unit.

10.2 The guarantee period spans twelve months after shipment by Poly Temp, unless agreed different.

10.3 Poly Temp is obliged to replace parts during the guarantee period, on the condition that the consumer has used the goods in a normal manner and has followed the instructions of use of the supplied goods carefully.

10.4 Poly Temp shall not be liable for any damage, whatever the nature, which the customer, its personnel or other assisting persons, or a third party might sustain due to the non-functioning or improper functioning of the goods delivered by Poly Temp, nor for damage due to any advice by Poly Temp regarding those goods, nor for damage due to late, incorrect or incomplete delivery of the relevant goods.

10.5 In case it were to be established legally that despite the provisions of the previous paragraph, Poly Temp is nevertheless liable for any damage referred to there, its liability shall at any rate be limited to the amount of any insurance coverage taken out by it, or should there be no insurance coverage, for any reason whatsoever, the invoice value of the goods delivered by it to which its liability is connected.

10.6 Poly Temp is in no way held to more than is stipulated in paragraph 5 of this article. In particular Poly Temp is not liable for damage to the customer, which stems from the not functioning or the insufficient functioning of the supplied goods causing, amongst other things, the loss or becoming useless of goods kept or stored in the supplied machines.

## **11. Indemnification**

The consumer is obliged to safeguard Poly Temp against and indemnify Poly Temp for all damages, costs and interest which might occur to Poly Temp as a result of third party proceedings against Poly Temp stemming from, or in relation to, the goods supplied by Poly Temp to the customer.

## 12. Termination and force majeure

12.1 If the consumer default the execution or fulfilment of any of the duties resting upon him from this agreement, Poly Temp is at its own choice, authorized either to defer fulfilment of the agreement or to rescind the agreement partially or completely, without proof of default or judicial interference and without Poly Temp being held to any warranty, indemnity or compensation.

12.2 The powers described in paragraph 1 of this article also being to Poly Temp in a situation of bankruptcy, suspension of payment (or any corresponding situation or judicial measure in other than Dutch law).

12.3 The customer is required to compensate Poly Temp for all damages suffered by Poly Temp through premature termination of the contract.

12.4 Poly Temp is authorized to postpone or terminate execution of the agreement, if, as a result of force majeure which cannot be attributed to Poly Temp, Poly Temp is unable to fulfil the agreement, without this leading to any obligation to compensation on the part of Poly Temp.

12.5 The term force majeure is taken to mean:

Any circumstance beyond Poly Temp's control that temporarily or permanently impedes its performance of the agreement, and, insofar as not already implied among these, war, threat of war, riot, obstructing measures taken by any government, import and export bans, loss or damage during transport, interruptions in the energy supply, natural disasters, strikes, exclusion of workers, transport problems, fire, theft, accident and / or any other serious disturbances in Poly Temp's or its suppliers companies.

## 13. Complaints

13.1 The customer is required to inspect the goods (or to have them inspected) immediately upon receipt. Poly Temp must be informed in writing of any complaints regarding defects in the goods that can be blamed on material or manufacturing errors and any differences in quantities, composition or quality between the goods that are delivered and the description contained in the order confirmation and / or the invoice not later than 8 days of the time of delivery of the goods. Poly Temp must be informed in writing of any defects that could not reasonably have been discovered within the above-mentioned term immediately after the defect is discovered and in any event within six months of the good's delivery.

13.2 The customer is not permitted to return the goods until Poly Temp has given it written permission to do so. The costs related to returning the goods will be paid by the customer, and the customer will continue the risks related to the goods.

13.3 Under no circumstances will any complaint release the customer from its payment obligations towards Poly Temp. The customer will not be entitled to enforce any claims vis-à-vis Poly Temp in respect of complaints about defective goods as long as the customer has failed to comply with any directly related obligation towards Poly Temp.

13.4 If Poly Temp delivers goods to the customer that Poly Temp has acquired from its suppliers, under no circumstances will Poly Temp have any guarantee obligations or any liability towards the customer that are more extensive than Poly Temp's claims against its suppliers.

## **14. Retention of title**

14.1 The goods delivered by Poly Temp remain property of Poly Temp until the customer has fulfilled all the following obligations ensuing from the agreement entered into with Poly Temp :

- the consideration(s) for the delivered or to be delivered products themselves;
- the consideration(s) for the services performed or to be performed by Poly Temp under the agreement;
- any claims ensuing from non-performance on the buyer's part of one or more agreements.

14.2 The goods delivered by Poly Temp, which fall under the retention of title clause pursuant to paragraph 1, can only be sold on within the context of normal business operations. Moreover, the customer is not authorised to pledge the goods or claim these as its own.

14.3 If a third party wants to claim or exercise its rights to the goods delivered under the retention of title clause, the customer is required to inform Poly Temp as quickly can be expected.

## **15. Intellectual property rights**

15.1 All intellectual property rights on or in connection with the goods delivered remain vested by Poly Temp.

15.2 All documents and notes handed over by Poly Temp to the customer together with the goods delivered, or otherwise made available to the customer in any form whatsoever, must be treated in strict confidence by the customer and may not be disclosed in any way to third parties without prior written consent of Poly Temp.

15.3 Insofar as Poly Temp has delivered goods according to specifications, models or other documentation handed over by the customer, the customer guarantees that no intellectual property rights of third parties are breached.

## **16. Applicable law and disputes**

16.1 All agreements concluded with Poly Temp which are governed by these general terms and conditions are exclusively subject to Dutch Law.

16.2 Notwithstanding the statutory rules for the competence of the civil court, the District Court of Noord-Nederland, will, in the first instance, have exclusive jurisdiction over any dispute between the customer and Poly Temp. However, Poly Temp is still authorised to bring a dispute before the court whose jurisdiction is determined by law or the applicable international treaty.



**STEK**  
DUURZAAM GECERTIFICEERD

**vca<sup>v</sup>**



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Authorized Dealer

