

General Terms and Conditions Van Empel Overstock

Version valid from: 12 November 2012

Article 1 Definitions and general provisions

- 1.1 Van Empel Overstock: with its registered office in Boven Leeuwen and listed with the Chamber of Commerce under number 09166812.
- 1.2 Client: a natural or legal person who has assigned Van Empel Overstock to supply Products.
- 1.3 Products: the most comprehensive concept of a good delivered by Van Empel Overstock
- 1.4 Website of Van Empel Overstock: the website of Van Empel Overstock, accessible via www.vanempelfashion.com.
- 1.5 The Client may derive no rights whatsoever from the fact that Van Empel Overstock may possibly apply these general terms and conditions flexibly.
- 1.6 These terms and conditions apply to all offers and all agreements of Van Empel Overstock that serve to sell Products.
- 1.7 The general terms and conditions of the Client are explicitly rejected and as such are not applicable in agreements concluded with Van Empel Overstock
- 1.8 In the event that one or more provisions of these general terms and conditions become null and void or are voided, the other general terms and conditions will remain fully in effect.
- 1.9 In these general terms and conditions the word written may also concern documents in writing transmitted electronically, particularly including via e-mail and fax.

Article 2 Offers and tenders

- 2.1 All offers are without engagement.
- 2.2 The prices stated by Van Empel Overstock in offers and tenders are excluding VAT and other taxes imposed by the government.
- 2.3 The prices stated by Van Empel Overstock are excluding any costs to be made in the scope of the agreement, including any shipping costs and administrative costs, unless otherwise stipulated.

Article 3 Concluding an agreement

- 3.1 Agreements are concluded after a Client has accepted a tender or offer issued by Van Empel Overstock and the latter has agreed to this acceptance.
- 3.2 A written agreement is concluded as soon as a tender from Van Empel Overstock has been signed by the Client and returned to Van Empel Overstock, or else as soon as Van Empel Overstock proceeds to delivery of Products.

Article 4 Delivery

- 4.1 Delivery will take place as long as available from stock.
- 4.2 In the event that the ordered Product is not immediately available from stock, Van Empel Overstock will give another delivery date, whilst it will make an effort to always effect delivery within six (6) weeks. This term may never be considered as a final deadline.
- 4.3 In principle, the Client shall pick up Products at Van Empel Overstock.
- 4.4 As an exception to article 4.3, Van Empel Overstock shall ship Products to address provided by the Client within the EU, if this is agreed upon explicitly. Van Empel Overstock is then entitled to lay down additional (payment) terms. The shipping costs are charged to the Client.
- 4.5 Van Empel Fashion will only proceed with the delivery of Product if the Client has fulfilled all his obligations towards Van Empel Overstock, unless there is explicitly agreed upon differently.

Article 5 Reservation of ownership

- 5.1 Van Empel Overstock reserves the ownership of all goods delivered to Client, as long as Client has not fully complied with its payment obligations towards Van Empel Overstock
- 5.2 An extraordinary disposition like a pledge, a provision of security and such, may only be effected with the consent of Van Empel Overstock Client will be obliged to notify Van Empel Overstock forthwith in the event that third parties seize delivered goods that are under reservation of title.
- 5.3 In case of failure to pay on the stipulated due date on the invoice and in case of suspension of payments of Client, Van Empel Overstock will be entitled to seize the goods without prior notice and Client will grant Van Empel Overstock irrevocable authorization to do so. Recovered goods will be credited by Van Empel Overstock against the value it assigns to these within reason.

Article 6 Conformity

- 6.1 Client must check the delivered Products immediately after these are received. Client must note down on the transport document any defective Products and inform Van Empel Overstock of this within no more than seven (7) days.
- 6.2 In the event that the Client fails to notify Van Empel Overstock of the defective Products within the term as stipulated in Article 6.1, these Products will be considered to have been received in good condition.
- 6.3 In the event that the defects observed by Client prove to be well-founded, Client will allow Van Empel Overstock a reasonable term to as yet comply with the agreement in a proper manner. In case of failure from the part of Van Empel Overstock to comply with the agreement, Client will be entitled to reimbursement of the amount paid to Van Empel Overstock for the defective Products.
- 6.4 Any claims from Client towards the right to warranty will not suspend any other obligations from Client arising from the agreement.

Article 7 Liability

- 7.1 Van Empel Overstock excludes all liability for indirect damages incurred through the use of Products supplied by Van Empel Overstock, with the exception of situations where the damage is directly attributable to wilful misconduct or gross negligence from the part of Van Empel Overstock, its management and/or managerial staff.
- 7.2 In the event that Van Empel Overstock is held liable, each liability will be limited to the amount of the invoice paid by the Client under the agreement concerned.
- 7.3 Direct damages shall exclusively be: the reasonable costs for assessment of the cause and the extent of the damages, in so far as the assessment relates to damages in the sense of these terms and conditions, any reasonable costs incurred to have the defective performance by Van Empel Overstock comply with the agreement, in as much as these costs may be attributed to Van Empel Overstock and reasonable costs incurred for restricting or limiting damages, in so far as the Client provides proof that these costs have caused the limitation of direct damages as referred to in this Article.
- 7.4 Van Empel Overstock shall in any case never be liable for the following damages: consequential damage, loss of profits, missed savings, loss due to business interruption, loss of dependency and personal injury.
- 7.5 The Client exempts Van Empel Overstock from liability towards third parties, which arise from or else are connected with the execution of the agreement.

Article 8 Obligations of the Client

- 8.1 In principle, the Client is obliged to behave in accordance with the provisions of these general terms and conditions and with what has been agreed between the representatives of Van Empel Overstock and Client.
- 8.2 Client is obliged to ensure that Van Empel Overstock has all the right information at its disposal to properly comply with the agreement.
- 8.3 Client is obliged to ensure normal usage and transportation of Products delivered by Van Empel Overstock. In case Client fails to do so, it will lose its right to warranty as referred to in Article 6.
- 8.4 In the event that Van Empel Overstock delivers custom-made work to Client, the latter will be required to submit all information requested by Van Empel Overstock. In the event that Client submits the wrong information to Van Empel Overstock, the Client will be obliged to pay up the amount of the invoice in full, without the Client being entitled to replacement and/or repair of the delivered Product.

Article 9 Force Majeure

- 9.1 Van Empel Overstock will not be obliged to comply with any obligations towards the Client in the event that Van Empel Overstock is impeded to do so due to a circumstance which is not attributable to it, nor a cause for which it is accountable by law, a legal act or according to generally accepted standards.
- 9.2 During the period of the force majeure, Van Empel Overstock may suspend all obligations under the agreement. In the event that the force majeure lasts for more than a sixty(60)-day period, each of the parties will have the right to terminate the agreement, without any obligation to compensate the other party for damages it incurred.

Article 10 Price & Payment

- 10.1 The Client is obliged to pay all invoices within the stipulated payment term.
- 10.2 The Client must fulfill payment as laid down in the invoice, or else as explicitly agreed upon with Van Empel Overstock
- 10.3 In the event that the Client fails to pay an invoice in time, the Client will be in default by operation of the law. The Client will then owe statutory interest. The interest of the amount payable will be calculated from the moment that the Client is in default until the moment that the full amount due is paid. The Client will also owe collection charges to Van Empel Overstock. The collection charges will be calculated in accordance with the aid of the Dutch *Voorwerk II* report, a national guideline for the court to determine the extrajudicial costs in civil cases.
- 10.4 All extrajudicial and judicial costs incurred by Van Empel Overstock in the event that it in any way whatsoever becomes involved in legal proceedings against Client, will be at the expense of the Client.
- 10.5 Prices will be subject to errors. In case of incorrectly specified prices Van Empel Overstock retains the right to correct the invoice or terminate the agreement, without the obligation to any compensation whatsoever.

Article 11 Applicable law and disputes

- 11.1 All legal relationships that Van Empel Overstock is party to will exclusively be governed by Dutch law. The Vienna Sales Convention is excluded.
- 11.2 Client and Van Empel Overstock will appeal to the courts only after they have made every effort to settle a dispute in mutual consultation.
- 11.3 The district court of Arnhem has sole authority to take cognizance of disputes between the Client and Van Empel Overstock, unless a statutory provision should prevent this.