

GENERAL TERMS & CONDITIONS OF CO.EXIST B.V.

1. Definitions

Seller: Co.Exist B.V., with its registered office in Amsterdam, and whose registered office and principal place of business is situated at Zuidermolenweg 2 (1069 CG) Amsterdam, as filed with the Chamber of Commerce under number: 65274725;

Purchaser: the natural or legal person the Agreement is concluded with;

Order: the Order placed by the Purchaser with the Seller for the delivery of certain goods;

Agreement: the Agreement concluded between the Purchaser and the Seller with regard to the delivery of goods;

Parties: the Seller and the Purchaser jointly;

Partial Delivery: the delivery of part of an Order by the Seller.

2. General/applicability

2.1 These General Terms & Conditions are applicable to all offers, tenders, orders, legal relationships, deliveries, and Agreements between the Purchaser and the Seller.

2.2 The general terms & conditions of the Purchaser shall only become part of the Agreement where the Seller has accepted these explicitly in writing (therefore not tacitly).

2.3 To potential contractual relationships with the Seller, especially to backorders, only these General Terms & Conditions of the Seller shall apply.

2.4 Changes of these General Terms & Conditions can only be agreed upon in writing between the Seller and the Purchaser.

3. Conclusion of the Agreement

3.1 All offers by the Seller shall be without obligations.

3.2 All prices referred to by the Seller shall be net prices and excluding VAT. All prices shall apply ex works of the Seller, including packaging. Extra charges shall apply to separate orders and made-to-measure orders.

3.3 Agreements shall be concluded by written confirmation of the Order of the Purchaser by the Seller.

3.4 All oral information and (changes of) Agreements with the Seller shall require written confirmation by the Seller to be legally valid.

4. Creditworthiness of the Purchaser

4.1 The condition for the Seller's obligation to deliver is the undisputed creditworthiness of the Purchaser.

4.2 If the Seller, after the conclusion of the Agreement, takes note of circumstances providing the Seller with substantial grounds to believe that the Purchaser may fail in the performance of his obligations, the Seller shall have the right to require advance payment or security from the Purchaser. If the Seller requires advance payment or security from the Purchaser, the agreed delivery periods shall be suspended from that time.

4.3 What is referred to in paragraph 2 applies particularly in the case of a substantial deterioration of the financial position of the Purchaser, suspension of payment, closing down sales, petition for bankruptcy, prejudgement attachment, executory measures, protests of cheques and bills, business cessation, if the Purchaser does not pay remaining invoices despite requests by the Seller or if a credit insurer does not want to insure an Order of the Purchaser.

5. Delivery and delivery period

5.1 The delivery of the goods shall take place ex works of the Seller (in accordance with the Ex Works Incoterm of 2010). Unless otherwise agreed, the Seller is entitled to choose a transporter that ships the goods at the expense and the risk of the Purchaser to the agreed upon location.

5.2 The Seller has the right to perform the Order in Partial Deliveries. The Purchaser agrees to unsorted Partial Deliveries, under the condition that the subsequent delivery shall take place within the period referred to in Article 5.6.

5.3 "Fix deals" shall not be concluded in any event. The agreed-upon delivery period is complied with where the goods, when the delivery period has lapsed, have been sent, or, in case - insofar the Purchaser is required to collect the goods - he has been notified that the goods are ready.

5.4 Force majeure and other exceptional events, which are not within the Seller's sphere of influence and which substantially complicate the delivery within the agreed-upon period or render delivery impossible (for instance, strikes, government measures, sickness, disruptions in the business of suppliers), shall extend the delivery period by the duration of the hindrance. Under these circumstances, the Seller shall be entitled to terminate the Agreement in so far as it has not been fulfilled.

5.5 The Seller shall immediately notify the Purchaser of the events as referred to in Article 5.4, as soon as it is established that these will have an effect on the delivery period. The Seller shall notify the Purchaser immediately of the estimated required extension of the delivery period.

5.6 If the delivery period ends without (full) delivery by the Seller to the Purchaser, an additional delivery period of twelve (12) days shall apply without any further notice by the Seller.

5.7 Where the additional delivery period referred to in Article 5.6 lapses without (full) delivery by the Seller, the Purchaser can provide the Seller with a written notice of default. The Purchaser must grant the Seller at least a period of twelve (12) days to (still) deliver the goods. After this period has lapsed, the Purchaser is entitled to set aside the Agreement with regard to the part of the Agreement which has not been fulfilled by the Seller.

5.8 If suppliers of the Seller do not, or not sufficiently, deliver certain fabrics or designs, or if due to an inadequate order backlog the production of individual goods is cancelled, the Seller shall be entitled to adjust the Agreement respectively. In this event, the Purchaser shall not be entitled to set aside the Agreement either wholly or in part.

6. Transfer of risks

6.1 The place of delivery for all operations from this Agreement shall be the place of business of the Seller.

6.2 The risk of loss, theft, and damage of goods shall be transferred to the Purchaser at the time of delivery.

6.3 The Seller is only obliged to take out goods-in-transit insurance if expressly requested by the Purchaser. The Purchaser shall bear the costs of the goods-in-transit insurance.

6.4 If the shipment is delayed by any reason that can in reasonableness not be attributed to the Seller, the Seller shall in this case have the right to store the goods at his own discretion at the expenses and at the risk of the Purchaser and to demand from the Purchaser immediate payment of the purchase price and storage costs.

7. Liability

7.1 The Purchaser is obliged to carefully inspect the goods immediately upon delivery. Ultimately ten (10) days after delivery the Purchaser is obliged to notify the Seller in writing of all defects and complaints that can reasonably be established while inspecting the goods, after which the Seller cannot be held liable for defects of the goods.

7.2 The goods are deemed to be accepted by the Purchaser if the Purchaser, in case of a timely complaint, does not return the goods to the Seller within seven (7) days after such request is made by the Seller.

7.3 The Purchaser cannot invoke defects when the Purchaser has made changes to the goods or has given instructions to make changes to the goods.

7.4 Slight deviations, or technically unavoidable deviations as to quality, colour, weight, sizes and design of the goods, which are customary in trade, shall not constitute a defect and do not incur damages, unless certain measures and/or shades have explicitly been agreed upon.

7.5 The Seller has the right to repair defects of defective goods within fourteen (14) days after the receipt of the returned goods or to supply accurate substitute goods. Goods may only be returned if the Seller has agreed with the return. If the Seller opts for repair of defects or substitute supply and this is unsuccessful, the Purchaser may claim, at his own discretion, a reduction of the purchase price or termination of the Agreement with regard to the defective goods.

7.6 Claims for damages by the Purchaser shall be excluded, unless they are the consequence of intentional violation or gross negligence in the execution of the Agreement on the part of the Seller or his legal representative or a person acting on his behalf.

7.7 If the Seller is liable for damage, based on special agreements or mandatory statutory provisions, the amount of compensation for the damage to be paid by the Seller shall be limited to a maximum of the purchase price of the goods delivered.

7.8 The Purchaser can only claim damages for delayed delivery instead of (partial) termination of the Agreement, where the Seller or a person acting on his behalf has caused the delay in delivery intentionally or by gross negligence. These damages are limited to a maximum of 0.5% of the value of the goods delivered for each entire week of the delay.

7.9 In the event of wrong packaging of goods, but also in the event that the Seller ensures shipment of the goods, the choice of transport and/or transport route, the Seller shall only be liable if he, or the agents acting on his behalf, can be blamed for intention or gross negligence.

7.10 In the event of a purchase according to a sample and/or specimen, the liability of the Seller for visible defects shall be excluded if the delivered goods are in accordance with the sample and/or specimen.

8. Payment conditions and setoff

8.1 The invoice is dated on the date of delivery. Extension of the due date is excluded.

8.2 Invoices need to be paid within thirty (30) days. The Purchaser shall receive a discount of three (3) percent if the invoice is paid within ten (10) days after delivery of the goods. The discount shall be deducted from the invoice amount. A discount is not granted when the Purchaser is in default of payment of an earlier delivery.

8.3 As of the due date, which is evident from the invoice date and the payment term, the Purchaser is subject to a statutory default interest under Article 6:119a of the Dutch Civil Code. Insofar as the statutory interest is lower than nine (9) percent per annum, the Purchaser is subject to a contractual default interest rate of nine (9) percent per annum. Additional claims for the compensation of potential loss due to delay remain reserved.

8.4 All payments must be made free of cost to the Seller. Decisive for the receipt of any payment is the date of the unconditional transfer to the bank account of the Seller. Cheques and bills are only accepted as payment upon prior written agreement. In the event of a check or bill protest the Seller may, under return of the check or bill, claim the immediate payment, also for later due payments.

8.5 The Purchaser can only setoff claims from the Seller against undisputed and legally valid counterclaims.

8.6 The Purchaser may only suspend his payment to the Seller insofar as his counterclaim is based on the same contractual relationship.

8.7 The Purchaser is only allowed to suspend payment to the Seller in the case of potential defects of goods or partial impossibility to fulfill the obligations of the Agreement on the part of the Seller with regard to the amount the Purchaser would be due for the defective or missing parts of the delivery in the case of correct supply.

8.8 All invoices from the Seller and all (future) claims from the Seller pursuant to Agreements already concluded shall be immediately due and payable if the Purchaser falls behind with the payment of one invoice, or when it is established, or from communication by the Purchaser can be established, that the Purchaser shall fall short in its performance. Furthermore, the Seller shall have to right to require advance payment or security from the Purchaser.

8.9 If the Purchaser:

- does not timely and/or fully settles an invoice; or
- does not take the goods ordered; or
- announces that he will not take the goods before the delivery has taken place; or
- without any right returns the goods; or
- cannot be supplied by the Seller because he is in arrears with his purchase and/or payment obligations; or
- has a significant deterioration in its financial position in the meaning of Article 4 of these General Terms & Conditions; then the Seller is, after a period of ten (10) days after sending a written and corresponding (payment) request, entitled to (partially) terminate the Agreement in writing.

In the event of a full or partial termination, the Seller is entitled:

- to freely dispose of the goods and sell them (directly) to customers of the Purchaser or other third parties;
- to recover the damage from by the Buyer by compensation of – at the discretion of the Seller – (i) a lump sum of 35% over the respective purchase price, or (ii) the actual damage.

8.10 The aforementioned conditions also apply to payments of Partial Deliveries.

9. Retention of title

9.1 All goods delivered, or to be delivered, to the Purchaser shall remain the property of the Seller until all amounts due to the Seller under the Agreement have been paid fully to the Seller.

9.2 Until the ownership shall be transferred to the Purchaser, the Purchaser shall (a) keep the goods as the agent of the Seller; and (b) keep the goods separately from all other goods of the Purchaser or any other party and – where necessary – mark the goods clearly as goods belonging to the Seller; and (c) maintain the goods in good condition and take out insurance for the full amount against all risks, including, but not limited to, theft, and destruction from any cause. On request of the Seller, the insurance certificate shall be submitted by the Purchaser.

9.3 The Purchaser is entitled to sell the goods purchased under retention of title before the property thereof has been transferred to him, under the condition that the sale shall be carried out as part of the Purchaser's normal business activities at full market value and that it concerns the sales of goods owned by the Seller so that it will be carried out in the interest of the Seller.

9.4 The Seller shall at all times be entitled to claim possession of the goods delivered under retention title, without further notification of default being required.

10. Exclusive distribution

The Purchaser shall sell the purchased goods exclusively in the shop location referred to in the Agreement. The sale of these goods in other shops or via other businesses is only permitted with Seller's explicit approval in writing. The Purchaser shall be liable for any damage the Seller suffers by breaches of this obligation. Commitments to exclusive distribution relate exclusively to the goods ordered and apply exclusively the season concerned.

11. Intellectual property

11.1 The Purchaser explicitly recognizes the Seller's exclusive rights in all registered and unregistered trademarks owned by the Seller, or of which the Seller is the licensee (hereinafter: the "Trademarks"), and in all trade names, business name, domain names, good will, copyrights, database rights, rights in designs and other intellectual property rights, whether registered or unregistered and owned or licensed by the Seller (hereinafter jointly: "Intellectual Property Rights").

11.2 The Trademarks and Intellectual Property Rights may not be used by the Purchaser without prior written approval by the Seller.

11.3 The Purchaser shall not do, cause or authorize anything which will or may impair or damage or be detrimental to the reputation or goodwill associated with the Seller or the Trademarks, which will or may adversely affect the value or validity of the Trademarks, which may bring the Trademarks in disrepute or which might jeopardize or invalidate any registration or application for registration of the Trademarks.

11.4 The Purchaser shall not claim ownership of the Trademarks nor shall the Purchaser register any Trademarks or any other trademark which is in the opinion of the Seller identical or confusingly similar to the Trademarks (including a translation thereof into another language).

11.5 The Purchaser shall not register or use any domain name or purchase or sell any keyword or hyperlink consisting or containing a Trademark or any other trademark which is in the Seller's opinion identical or confusingly similar to the Trademarks (including a translation thereof into another language), without the Seller's explicit written approval and exclusively to sell the goods in accordance with the Agreement and these General Terms & Conditions.

11.6 The Purchaser shall not make use of the Trademarks or Intellectual Property Rights on any social networking site other than to sell the goods in accordance with the Agreement and these General Terms & Conditions and exclusively by using pictures and visuals provided by the Seller.

12. Internet sales

12.1 The Purchaser is required to ask the Seller's approval prior to selling on the internet. The Purchaser shall provide examples of the website and other information required for the assessment whether the goods are presented clearly and visible on the website, in a manner consistent with the Seller's image and good reputation.

12.2 Internet sales are not permitted if the Purchaser does not have a physical sales point where the goods are sold.

12.3 In the event of internet sales, the Purchaser is obliged to present the goods clearly and visible on the website, in a manner consistent with the Seller's image and good reputation.

12.4 The Seller shall be permitted to impose further quality requirements for the sale on internet without permitting the Purchaser to recover any costs and/or damages therefrom of the Seller.

13. Contractual penalties

13.1 The Purchaser shall be required to pay a contractual penalty of EUR 5,000,-- for the benefit of the Seller:

- in all cases where the Purchaser, in the absence of, or in conflict with contractual stipulations, resells the goods to a sector or a third party the Purchaser is not permitted to sell the goods to;
- in all other cases of non-contractual resale, for instance within the framework of unauthorized sale and/or in sectors and/or sales locations which are not permitted;
- in all cases where the Purchaser acts contrary to any obligation under Article 12.

13.2 When forfeiting a penalty as referred to in Article 13.1, the Seller shall retain all other rights, including, but not limited to, the right to claim supplementary compensation for the actual damage suffered.

14. Applicable law and disputes

14.1 All disputes which may arise between the Parties pursuant to these General Terms & Conditions, or any other Agreements and other actions in the basis of these General Terms & Conditions, shall be settled by the District Court of Amsterdam.

14.2 The General Terms & Conditions are governed by the laws of the Netherlands. The Convention on Contracts for the International Sale of Goods (Weens Koopverdrag) does not apply to these General Terms & Conditions.

15. Final provisions

15.1 The Dutch-language General Terms & Conditions shall prevail over the English-language version of the General Terms & Conditions.

15.2 If any provision of these General Terms & Conditions is invalid or void, the remaining provisions of these General Terms & Conditions shall remain in force. In that case, the Parties shall enter in consultations to determine new provisions to substitute the invalid or void provision.

15.3 Upon request, the General Terms & Conditions will be forwarded free of charge and they can also be consulted on www.co-exist.com.