

# GENERAL TERMS AND CONDITION FOR DELIVERY TO CONSUMERS

of HotTeapots.com hereinafter to be referred to as: The Company, also trading as theemutshop.nl and teacosyshop.nl

It is our aim to diligently and speedily fulfil all orders of our customers in a professional way and resolve any issue in a reasonable and amicable way. However just in case we cannot reach a solution to mutual satisfaction, the terms as stated below will apply. These terms are based on general terms as provided by the chamber of commerce in the Netherlands.

## Article 1: Definitions

In these general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.

**The Company:** The Company as mentioned in these general terms and conditions;

**Consumer:** an opposite party being a natural person who does not act in the course of a business or in the course of a profession;

**Agreement:** the agreement between the Company and the Consumer; Agreements come into force as soon as the Customer places an order and submits payment to the Company.

**Consumer purchase:** the agreement of sale concerning a movable thing concluded by the Company and a Consumer.

## Article 2: General

1. The present terms and conditions shall apply to each sale and agreement between the Company and a Consumer.
2. The present terms and conditions shall also apply to agreements with the Company if the execution calls for the services of third parties.
3. Possible deviations from the present general terms and conditions shall only be valid provided they have been explicitly agreed upon in writing by the Company.

## Article 3: Offers

1. All offers shall be free of obligation and shall be made in one written form or other. Prices stated on the Company's website will be regarded as offer. These can be changed at any time. Customer cannot derive any rights from historic prices.
2. The Company shall only be bound by offers if the Consumer accepts such, in writing. Placing a firm order through the Company's website will be regarded as acceptance of stated pricing and as acceptance of Companies General Terms and Conditions. The prices shall include VAT and taxes, unless indicated otherwise. VAT and Taxes will have to be paid by customer and will be displayed during the payment process. These may vary by country or otherwise. Should any VAT or Taxes based on any transaction be imposed by authorities after the moment of the transaction, these will be charged to Customer. This excludes taxes on overall revenue of the Company.
3. It shall not be possible to bind the Company to offers if the Consumer should have understood in accordance with the requirements of reasonableness and fairness and according to the usual criteria in social and economic life that the price or part thereof, obviously contains a mistake or an error in writing.
4. If any order combines products and a discount based on the combination, this shall not

- oblige the Company to deliver part of the goods contained in the offer against a corresponding part of the given pricing.
5. Pricing shall not apply automatically to repeat orders.

## **Article 4: Conclusion of the Agreement**

1. The present agreement shall be concluded through the acceptance by the Consumer of the Company's offer, in practice by completing an order on Companies website.

## **Article 5: Delivery**

1. Unless agreed upon otherwise, delivery shall be made ex works/store/warehouse of the Company or at any agent the company shall use for fulfilment of the delivery.
2. The Consumer shall be held to take delivery of the purchased goods the moment said goods are at his disposal or handed over to him.
3. If the Consumer refuses to take delivery of the purchased goods or fails to give the information or instructions necessary to their delivery, the goods destined for delivery shall be stored at the Consumer's risk, if reasonably possible following notification of the Consumer by the Company. In said event, the Consumer shall owe all additional costs.
4. Orders of multiple products can be delivered in parts, which shall be decided in the sole discretion of the Company. However, if Customer has agreed on shipping cost prior to this decision, any additional shipping cost will be paid for by the Company.
5. If, in the framework of the execution of the purchase, the Company requires data and payment information to be given by the Consumer, the term of delivery shall commence after the Consumer has provided the Company with said data and the Company has assessed that payment will be guaranteed. The Company aims to charge payment at the moment of shipping, however depending on payment method and delivery method this may not be possible, and charging will be at moment of ordering.
6. If the Company has given a term of delivery, it shall only be indicative. A given term of delivery shall therefore never constitute a term to be observed on penalty of forfeiture of rights. The final term of delivery shall, however, never exceed the given term of delivery by more than 30 days, unless there is a matter of force majeure. If the term of delivery is exceeded, the Consumer must give the Company notice of cancellation in writing (e-mail) in case the Consumer wishes to cancel the order. The company endeavours to keep Consumer informed about delays to the best of its abilities. However, there may be delays outside the control of the Company.

## **Article 6: Guarantee**

1. The Company shall guarantee that the goods to be delivered shall meet the usual requirements and standards that can be set for and made upon them and that they shall be free of defects upon shipment.
2. The guarantee mentioned under 1 shall equally apply if the goods to be delivered are destined for use abroad in the country that is entered when entering the shipping

address.

3. Should goods be delivered directly from manufacturers or handling agents the normal guarantees and conditions of these parties shall apply.
4. The guarantee mentioned under 1 shall be valid for a period of 3 months following delivery.
5. The note of delivery shall serve as proof with respect to the guarantee.
6. If the good(s) to be delivered does not comply with said guarantee, the Company shall, at his discretion, replace the good or issue a (partial) refund, within a 14 days following receipt of the goods, or, if the goods cannot be returned in reason, following notification of the defect by the Consumer. Any returns shall be approved by Company prior to sending.
7. Any damages during transport must be reported within three working days after delivery to the customer. If damage is obvious upon delivery this needs to be stated to the party delivering the goods and be noted on waybill, delivery notice or similar. This will help the Company in some cases to reclaim the damage from the shipping agency. Upon your report the Company will get in contact with Consumer as soon as possible to resolve the situation.
8. The guarantee mentioned for this purpose shall not apply when the defect originated as the result of injudicious or improper use, as result of normal wear or tear, breakage (other than during transport prior to delivery) or when the Consumer or third parties have introduced changes or tried to introduce changes to the good or if they have used it for purposes for which the good was not intended.
9. In case the delivered good does not comply with the agreement and this non-conformity is a defect as described in the product-liability rules, the Company is not liable for any consequential damage resulting from the defect.
10. All that is stated in these general terms and conditions about guarantee, has no effect on the guarantees of the Consumer by reason of the law of the Netherlands, everything with due observance of the provisions set out in these general terms and conditions and in the agreement, including the nature and quality of which is sold and delivered to the Consumer.

## **Article 7: Retention of Title**

1. The Company shall remain the full owner of the delivered good until the purchase price has been paid in full.

## **Article 8: Inspection & Reclamations**

1. The Consumer shall be held to inspect the delivered goods (to have the delivered goods inspected) the moment of delivery (handing over), but in any case, in as short a period of time as possible. In this respect, the Consumer must examine whether the quality and the quantity of the delivered goods comply with what was agreed upon, or at least whether they meet the requirements applying to said goods in normal (business) transactions.
2. Possible visible shortcomings must be communicated in writing (email qualifies as writing) to the Company within three days following delivery and this together with the simultaneous submission of a copy of the note of delivery and one or more pictures of the

defect good, unless the latter is impossible or unreasonably onerous. Return cost will only be reimbursed after prior approval of the Company

3. The Consumer must inform the Company of a non-visible defect within 8 days following its detection, but in any case, before the guarantee period expires, observing the stipulations of the previous paragraph of the present article. When the guarantee period has expired, the Company shall be entitled to charge the Consumer for all repair or replacement costs, including administration and shipment costs as well as call-out charges.
4. If in accordance with the previous paragraph, the Consumer files his complaint in due time, he shall still be held to take delivery and effect payment of the goods purchased. If the Consumer wishes to return defect goods, he shall do so following prior consent in writing from the Company.

## **Artikel 9: Complaints**

We will aim to find a solution for any problems together with the Consumer.

We recommend to first report complaints to us by emailing to [info@hotteapots.com](mailto:info@hotteapots.com)

If this does not lead to a solution, it is possible to register your dispute for mediation at Stichting WebwinkelKeur.

From 15 February 2016, it is also possible for consumers in the EU for complaints to be registered via the ODR platform of the European Commission. This ODR platform can be found at <https://ec.europa.eu/odr>. When your complaint is not yet being handled elsewhere, you are free to deposit your complaint via the platform of the European Union

## **Article 10: Transfer of Risk**

1. The risk or loss of, or damage to the products being the subject of the agreement, shall be transferred to the Consumer the moment said products are judicially and/or actually delivered to the Consumer and therefore fall into the power of the Consumer or of third parties to be appointed by the Consumer.

## **Article 11: Price Increase**

1. If a price increase takes place during the order process, the Consumer can dissolve the agreement with a written statement regardless the percentage with which the price was increased, unless
  - the increase is the result of a power given to the Company by law;
  - the Company is obligated to increase the price by (virtue of) law;
  - it is stipulated that delivery will take place more than three months after parties have entered into the contract.

The company will avoid price increased on orders in progress wherever it can, however if these must be applied to orders that involve special customization of products, the order cannot be cancelled. The company will contact the consumer to find a mutually acceptable solution in such cases.

## Article 12: Payment

1. Unless agreed upon otherwise, payment must be made the latest upon shipping, unless method of payment or delivery requires otherwise. The Company undertakes to its best effort to provide clarity on this linked to all products.
2. Payment will be affected in a way to be indicated by the Company and in Euro's as listed on the Company website.
3. Contestation of the amount on the invoice(s) shall not suspend the fulfilment of the payment obligation.
4. If the Company cannot execute the payment at time of shipment as submitted by the Consumer it will notify customer forthwith. If customer fails to provide adequate means of payment within 14 days after being notified the order will be cancelled and the Company shall have no obligations to Consumer

## Article 13: Suspension, Cancellation and Returns

### By Consumer - 14 days return guarantee:

1. Our return guarantee means that if for any reason you are not satisfied with your purchase within 14 days of purchase (or after receipt of the goods, if later), that we will reimburse the costs of the product (and possibly paid shipping costs).
2. The shipping of returned goods must take place within a period of 14 days after Consumer notifies the Company about such returns,
3. For more instructions on returns, see: Returns
4. Products that are packaged to order, specifically packed loose-leaf tea, are excluded from return.
5. Reimbursement or credit for the cancelled order or for the returned goods and any original shipping costs will take place within 14 days after the cancellation or, in case of return, after receipt in good condition of the return shipment. The original payment method will be used.
6. If the product was damaged or faulty, we will also reimburse the costs for return shipping. Otherwise the cost for returning items will be paid by Consumer.

### By HotTeapots.com:

1. The Company shall be authorised to suspend the fulfilment of the obligations under the agreement or to dissolve the agreement, if:
  - Consumer does not fulfil or does not fully fulfil his obligations resulting from the agreement;
  - After the agreement has been concluded, the Company learns of circumstances giving good ground to fear that the Consumer will not fulfil his obligations. If good ground exists to fear that the Consumer will only partially or improperly fulfil his obligations, suspension shall only be allowed in so far, the shortcoming justifies such action.
2. The Company shall furthermore be authorised to dissolve the agreement (have the agreement dissolved) if circumstances arise of such a nature that fulfilment of the obligations becomes impossible or can no longer be demanded in accordance with the

requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.

3. If the agreement is dissolved, the Company's claims against the Consumer shall be forthwith due and payable. If the Company suspends fulfilment of his obligations, he shall retain his rights under the law and the agreement.
4. The Company shall always retain the right to claim damages.

## **Article 14: Safeguarding**

1. The Consumer shall safeguard the Company against claims filed by third parties concerning intellectual property rights on material or data provided by the Consumer, which shall be used for and during the execution of the agreement.
2. If the Consumer provides the Company with information carriers, electronic files, emails or software etc., the former shall guarantee that said information carriers, electronic files, emails or software are free of viruses and defects.

## **Article 15: Intellectual Property and Copyrights**

1. Without prejudice to the other stipulations of the present general terms and conditions, the Company shall reserve the rights and authorities to which the Company is entitled under the Copyright Act.
2. The designs, sketches, web-pages, drawings, films, software and other material or (electronic) files, possibly produced by the Company within the conduction of business, shall remain the Company's property, irrespective of the fact whether they have been handed over to the Consumer or to third parties, unless agreed upon otherwise in writing.
3. The Company shall reserve the right to use the knowledge gained due to the execution of the work for other purposes within the Company, in so far, no confidential information shall be brought to the notice of third parties when doing so. The company may provide said information to third parties insofar these are instrumental in fulfilling the order, placed by consumer.

## **Article 16: Liability**

1. If the goods delivered by the Company are defective, the Company's liability vis à vis the Consumer shall be limited to the arrangements made in the present terms and conditions under "Guarantee".
2. When the producer of a defective good is liable for consequential damage, the Company's liability shall be limited to replacing the defective good, or to returning the purchase price.
3. Without prejudice to the above, the Company shall not be liable if the damage is attributable to intentional act or omission and / or gross negligence and / or imputable actions, or to injudicious or improper use on the part of the Consumer.
4. The limitations of liability for direct damage contained in the present terms and conditions

- shall not apply if the damage is due to intentional act or omission or gross negligence on the part of the Company or his subordinates.
5. Some products delivered by the Company may become very hot when in use or may have sharp edges when broken due to dropping or otherwise. The Company shall not be liable for any consequential damage as result of these or any other circumstances. Consumer needs to take proper care in exposing small children to small parts contained as part of the products delivered.
  6. The liability of the Company is in any case limited to the amounts paid by the Consumer.

## **Article 17: Force Majeure**

1. Parties shall not be held to fulfil any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.
2. In addition to the provisions of the law and the judge-made law in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which the Company cannot have any influence but which prevents the Company from fulfilling the obligations. Industrial action at the Company's company or at any agents used by the Company shall also be understood to be a circumstance of force majeure.
3. The Company shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfilment of the obligation(s) impossible, commences after the point in time on which the Company should have fulfilled his obligation.
4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfilment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.
5. Insofar the Company has already partially fulfilled his obligations resulting from the agreement at the moment the circumstance of force majeure commenced or shall be able to fulfil them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, the Company shall be entitled to separately invoice the part already fulfilled or still to be fulfilled respectively. The Consumer shall be held to pay this invoice as if it were a separate agreement.

## **Article 18: Disputes**

1. The Court in the Company's place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. The Company shall nevertheless be entitled to submit the dispute to the Court deemed competent by the law.
2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

## **Article 19: Applicable Law**

1. Dutch law shall apply to each agreement between the Company and the Consumer. The Vienna Sales Convention shall be explicitly excluded.

## **Article 20: Changes to the Terms and Conditions, interpretation and their location**

1. The present terms and conditions will be filed at the office of the Chamber of Commerce in Arnhem.
2. The Dutch version (if existent) of these general terms and conditions always prevails in case of disputes about the interpretation and purpose of these terms and conditions.
3. The most recently filed version shall always apply, or, the case ensuing, the version valid at the time the agreement was concluded.