

# General Terms and Conditions

**Merchandise.nl BV | Terms & Conditions in English - Merchsupply.com**

## Article 1. Applicability

1. These general terms and conditions apply to all of our offers and all agreements entered into by Merchandise.nl, however named.

These general terms and conditions explicitly apply to the agreements entered into by Merchandise.nl regarding the delivery of goods to our buyers.

2. Wherever a buyer is mentioned in these general terms and conditions, this also includes every natural person or company that is connected, by agreement, to Merchandise.nl, on the basis of a buyer's agreement, entered into with Merchandise.nl, or wishes to enter into an agreement of a different nature. Buyer also explicitly includes all persons on whose assignment and at whose expense goods are delivered.

3. Deviations from the stipulations in these terms and conditions can only and exclusively take place in case and to the extent that this is agreed upon explicitly and in writing.

4. In case the buyer also refers to (his) general terms and conditions, the general terms and conditions of the buyer do not apply. This can only be deviated from in case and to the extent that the applicability of the buyer's terms and conditions are not contrary to our general terms and conditions in that case, only the stipulations in our terms and conditions will apply. Any stipulation stating otherwise, within the terms and conditions of the buyer, does not affect the preceding stipulations.

5. Wherever delivery (of goods) is mentioned in these general terms and conditions, this also includes the performance of services and work activities of whichever nature.

## Article 2. Quotations

1. All of our quotations must be regarded as invitations to potential buyers to make an offer. As a result, these are in no way binding to Merchandise.nl, unless a statement to the contrary is made in the quotation itself explicitly and undisputedly (in writing). The order tendered to Merchandise.nl must be regarded as an offer, which

can only be regarded as accepted by Merchandise.nl after written confirmation by our company (the so-called order confirmation).

2. The following items are part of the quotations made by Merchandise.nl – especially vis-à-vis the stipulations in section 1-: designs, drawings, models, samples, descriptions, images and the like, as well as any annexes and documents pertaining to our quotations. All of these goods will remain the property of Merchandise.nl, as well as all tools made by Merchandise.nl in this respect, must be returned to Merchandise.nl upon request by Merchandise.nl and may not be copied and/ or given out to third parties without our explicit, written permission. Also, Merchandise.nl reserves all existing rights with respect to intellectual and industrial properties.

3. In case the order that our quotation pertained to has not been placed with Merchandise.nl within two months following the day on which we tendered our quotation, we are authorised to charge the buyer with the costs connected to the tendering of the quotation by Merchandise.nl, also including the costs connected to the making of the tools mentioned in the preceding section.

### **Article 3. Establishment of the Agreement**

1. An agreement with Merchandise.nl will only be created at the time we have accepted an order placed with Merchandise.nl in writing. An agreement must be regarded as accepted at the time we send the order confirmation.

2. The order is only initiated by Merchandise.nl once the (down) payment, agreed upon in the order confirmation, is received.

3. The order confirmation that is sent to the buyer by Merchandise.nl will be deemed to reflect the content of the made agreement in full and correctly. The buyer is deemed to agree with the content of the order confirmation, unless he indicates, within three days after the date of the order confirmation and in writing, that he cannot agree with those contents.

4. Any additional agreements and/or commitments made and/ or stated by our employees, or made on behalf of Merchandise.nl and/or made by other persons acting as representatives, are only binding to Merchandise.nl in case these agreements and/or commitments are confirmed, in writing, by (a) partner(s) authorised by us regarding this representation.

### **Article 4. Prices**

1. Our prices exclude turnover tax and, unless agreed otherwise explicitly and in writing, excluding packaging, transportation costs and other costs.
2. All prices stated in quotations, contracts and order confirmations are based on the cost factors valid at the time of the establishment of the agreement, like exchange rates, manufacturer costs, raw material and material costs, salary and transportation costs, insurance premiums, taxes, import rights and other government levies.
3. Merchandise.nl reserves the right to, in case price increases occur in one or more of the cost factors after the date of the agreement yet before the date of delivery, charge these increases to the buyer. Moreover, we reserve the right to declare the agreement partly or wholly terminated in such cases, without the necessity of judicial intervention. The buyer also has the latter right, however only in case we, at Merchandise.nl, claim the statement, within 3 months after the conclusion of the agreement, that an increase in the price mentioned in the assignment confirmation stems from changes in the costs. In case the buyer decides to use this right, he must invoke the termination via registered mail, within 5 days after receiving the information in question from Merchandise.nl.
4. If your images cannot be provided in a printable format, we will charge a minimum rate of € 50.00 in preparation costs. Any further working hours will be invoiced at an hourly rate of € 50.00.
5. Merchandise.nl reserves the right to change offers. It may be possible that, as a result thereof, offers on our website are no longer valid. It is the responsibility of the client to verify this beforehand.
6. All of our prices include setup costs (provided that the artwork meets our standards), yet exclude shipping costs. Unless stated otherwise explicitly, our prices exclude VAT.
7. In case of urgent deliveries, all discounts will principally cease to apply. All costs for urgent transport (Express/ Courier services) will be charged, unless decided otherwise.

## Article 5. Delivery terms

1. All delivery terms stated by Merchandise.nl will become valid on the day on which the agreement is established, provided that all information (and payments) we require for the performance of the order are in the possession of Merchandise.nl. The delivery terms stated by Merchandise.nl may never be regarded as a final date, unless explicitly

otherwise agreed in the individual agreement. In case of untimely delivery, the client is required to place us in default in writing. In case deviating from the stipulations mentioned above a fine in case of an exceeding of the delivery time was agreed upon explicitly in the individual contract, this fine will not be claimable in case the exceeding of a delivery term is a consequence of cases of force majeure, described in article 10 of these general terms and conditions.

2. Unless the contrary is evident from the order confirmation, the goods will be delivered home in case the invoice amount exceeds € 1,000, in words: one thousand euros, excl. VAT, for deliveries within the Netherlands, at one single address. Apart from this, the transportation of the goods will take place at the expense of the buyer. It is possible to have any customs clearance costs arranged by Merchandise.nl, yet this will take place at the expense of the buyer.

3. Unless the buyer provides an expeditor himself, the goods will be shipped in the manner that is most economical in the opinion of Merchandise.nl, by expeditors at the choice of Merchandise.nl and at the risk and expense of the buyer.

4. In case the buyer makes a request to have goods delivered in a different way than usual, any costs incurred as a result thereof may be charged to the buyer by us.

5. In case the delivery takes place in sections, we reserve the right to regard every delivery as an individual transaction.

6. The buyer is under obligation to accept the purchased goods within the agreed upon time period. In case of default thereof, we are authorised at our discretion on the basis of article 6:60 of the Dutch Civil Code to demand that the court of jurisdiction exempt Merchandise.nl from our obligation to deliver the agreed upon goods, or to demand payment of the section that was not accepted, without prior notice of default.

In case the buyer does not meet his payment obligations, we are authorised to declare the agreement void, without judicial intervention. In case the buyer, in accordance with the stipulation described above, demands payment of the purchase price in default, the goods must be delivered and we will store the goods at the expense and risk of the buyer and for reimbursement of all costs stemming from it.

7. The buyer is deemed to pay in full and accept the goods within 8 days after our notification that his goods are ready.

## Article 6. Buyer complaints

1. The buyer guarantees the correctness and completeness of, and bears responsibility for, the information he has provided to Merchandise.nl.

Regarding information, sizes, colour realness and the like provided by Merchandise.nl in our quotation, or whatever may be part thereof in concordance with article 2, section 2, the client must take into account the usual margins and minor alterations in the goods delivered by Merchandise.nl. More specifically, this applies to deviations in the quantities agreed upon in contract; in this respect, too, the buyer must take into account the usual fluctuations.

As a result, the goods delivered by Merchandise.nl may deviate from the description in the order, in case and to the extent that this involves minor differences in size, quantity and the alteration of inferences.

2. Merchandise.nl guarantees quality: in order to protect you from e.g. misprints, we reserve the right of an overrun or underrun of 10%, without price alterations, regarding waste or faulty production. It may be possible that we send you all articles, despite small deviations; in case more than 10% of the delivered articles are of insufficient quality, we ask you to contact us within five working days after the delivery.

3. Please take into account possible, minimal deviations of approx. 5% in both set and embroidered colours, location and measurements of your logo/ personalisation. This is because of the possible use of different programmes and colour settings, ink reactions on certain surfaces etc.

4. Complaints from the buyer regarding clearly visible faults in goods must be made known to Merchandise.nl within 5 days after delivery, or within 5 days after the invoice date in case the goods were/could not (be) delivered to the buyer. This must take place by registered mail, containing a clear, detailed description of the complaint and with notification of the invoice in which the goods in question are invoiced.

The buyer must perform a careful and timely check.

5. Faults that were not clearly visible at the time of delivery, nor during a careful and timely check, must be brought to the attention of Merchandise.nl within 8 days after the discovery of these faults, in the way described in section 4.

6. Every right of claim of the buyer vis-à-vis Merchandise.nl regarding faults in goods delivered by Merchandise.nl will cease to apply in case:

a. the faults are not brought to the attention of Merchandise.nl within the time periods set in or in the manners indicated in sections 4 and 5;

b. the buyer does offer Merchandise.nl any/sufficient cooperation regarding the investigation into the merits of complaints;

c. the buyer has not set up, handled, used, stored or maintained in the correct way or in case he has used or handled the goods under circumstances or for purposes other than intended by Merchandise.nl;

d. the application of the use of the goods regarding which the complaints have been presented is continued;

e. the term of warranty mentioned in the individual agreement has expired, or, if case no such term is applicable, the complaints are presented after a period longer than two months after the expiration of the delivery period.

7. If your complaint is deemed justified and we agree to replace the agreed upon articles, please take into account that, principally, the replaceable articles must be returned first before we proceed to replace them.

8. In case of disputes regarding the quality of the goods delivered by Merchandise.nl, an agency, of good standard and at the appointment of Merchandise.nl, will make a binding decision in that matter.

## Article 7. Liability

1. With the exception of cases in which the warranty obligations regarding the goods delivered by Merchandise.nl are not accepted by third party (e.g. manufacturers), the buyer can make (warranty) claims against Merchandise.nl.

In those cases, our liability will be limited to faults that are the consequence of manufacturing and material faults.

2. In case of complaints, we are, in case the substance of the complaint regarding quality is established by Merchandise.nl and in case liability also applies to Merchandise.nl, as referred to in section 1, only liable in that respect, at our own discretion-:

a. repair of fault (free of charge);

b. delivery of replacement goods and/ or parts, after having received the faulty goods or parts back;

c. reimbursement of the received purchase sum/ crediting of the invoice sent to buyer, with cancellation of the concluded agreement without judicial intervention, all to the extent that the purchase sum, the invoice and the agreement apply to the delivered goods;

d. compensation, payable after consultation with the buyer, other than described above.

3. In case the buyer has (had) made repairs or alteration to the goods without prior, explicit and written authorisation, every warranty obligation on our side will cease to apply.

4. Without prejudice to any obligations of Merchandise.nl stemming from the stipulations set out above, we are never obligated to pay any damages to the buyer or other parties, unless intent or guilt on our side applies (to be legally proven by the parties holding Merchandise.nl liable). We emphasize that we are never liable for any consequential or corporate damages, direct or indirect damages, under whichever name, including loss of profit and idleness damages suffered by the client, or suffered by persons employed by him or third parties, as a result of whole or partial (re)deliveries of goods, delayed or faulty delivery, or the non-occurrence of delivery of goods, or resulting from the goods themselves.

5. The buyer is not authorised to return goods about which no motivated complaint exists. Should this occur anyway and without good reason, all costs connected to the resending are at the buyer's expense. In these cases, we are authorised to store the goods, at the expense and risk of the buyer with third parties.

6. The buyer is obligated to exempt the buyer from all liability claims third parties may present against Merchandise.nl regarding the performance of the agreement, insofar as the law does not form any objections against all damages and costs stemming from these claims being at the expense of the buyer.

7. Merchandise.nl cannot be held responsible for any delay in your delivery, caused by external parties (transporters, customs services, customs clearance organisations etc.).

8. Merchandise.nl assumes that all images supplied by the client are the property of the client himself. As a result, Merchandise.nl cannot be held responsible for any violations of copyright laws and any consequences stemming from it.

9. Merchandise.nl has a team of designers at its disposal, with which you can be put in contact if so desired. However, we are not responsible for the further series of transactions and/or communications with these designers. Also, we cannot be held responsible for the acceptance or refusal of any assignment by those designers. Merchandise.nl cannot be held responsible for any transactions with our partners and/or designers. It is possible to have Merchandise.nl perform all communications for you.

10. Merchandise.nl is not liable for damages, sustained during the transportation to and from to the storage facility at the clients place of business.

## **Article 8. Reservation of title and security**

1. All goods delivered by Merchandise.nl will remain the property of Merchandise.nl until the moment of payment in full of all matters the buyer owes to Merchandise.nl, pursuant to, in connection with or stemming from the goods delivered by Merchandise.nl. In case we deem it necessary, we reserve the right to demand security regarding compliance by the buyer in respect of his obligations.

2. The buyer does not have the right to give out unpaid goods as collateral, to exercise a non-possessory pledge on these goods or to exercise any other business or personal right on these goods for the benefit of third parties.

3. Without prejudice to the stipulations in this article, the buyer is permitted to sell goods to third parties, yet exclusively in the line of his regular business operations. In this event, the buyer is under obligation to transfer any obtained moneys to Merchandise.nl immediately or, in case sales have taken place under non-cash payments, to transfer the obtained claims to us immediately.

4. In case the ownership rights of the goods delivered by Merchandise.nl are lost as a result of alteration or processing, the buyer is obligated to immediately exercise a non-possessory pledge on the goods established after the alteration or processing, for the benefit of Merchandise.nl.

5. We are authorised at all times to reclaim into our possession any goods that are under the control of the buyer (or third parties), yet which are the legal possessions of Merchandise.nl, at the moment we can reasonably assume that there is a realistic chance that the buyer will not meet his obligations. The preceding stipulation does not affect the right of Merchandise.nl stemming from ordinary law: we specifically reserve the right to claim damages from the buyer after the repossession.

6. The buyer is under obligation to insure unpaid goods against fire and theft and to show these insurances to Merchandise.nl, if so requested.

7. Merchandise.nl reserves the right to use images/overproduction or realised articles or samples, as well as the company names and logos of our clients, as commercial materials or on our website, unless you explicitly object to this use. Regarding this, no reclaims can be made in retrospect.

## Article 9. Payment

1. Payment must take place in Dutch currency or euros, unless otherwise agreed, without any deductions or discount, in cash and at our company location, or by transfer into a bank or giro account indicated by Merchandise.nl. Down payments are required in many cases this is stipulated in the order confirmation received by the buyer. Sample rates are always charged these are partly compensated eventually in the final settlement. In case of payment via bank or giro accounts, the day of crediting in our bank or giro account will constitute the day of payment.

2. The following applies to clients having payment terms; in case of late payment, **all** granted discounts will cease to apply. We also reserve the right to increase the amount of your invoice in case of late payment with the legally valid percentage. In case outstanding debts are presented by us to our collection agency, all additional costs are at the expense of the buyer.

3. In case the buyer does not proceed to (timely) pay in full, he will be in default, without the necessity of a notice of default. In case of exceeding of a payment term, all granted discounts will cease to apply. In that event, we reserve the right, in case of sufficient connection exists with the buyer's non-compliance, to suspend compliance with all our obligations vis-à-vis the buyer, without prejudice to all of our rights stemming from normal law.

4. Also, we are authorised to demand payment in cash for all future deliveries regarding the delivery of the goods, or a security for timely payment. In those cases, we are furthermore authorised to terminate the agreement without judicial intervention, in which case the obligation of reversing all efforts made by

Merchandise.nl rests with the buyer, without prejudice to the right of Merchandise.nl to claims of damages. If the buyer is in default regarding timely payment, he forfeits to Merchandise.nl or the credit insurer of the seller, without the necessity of any further notification from us and from the due date until the day of payment in full, interest equal to the legal interest of 4% per annum, charged over the unpaid amount. The described interest will become claimable immediately and without further notice of default.

All costs involved in the collection of invoiced amounts (including extra-judicial collection costs) are at the expense of the debtor. The extra-judicial collection costs will amount to a minimum of 15% of the principal amount, with a minimum of € 50.00, all excluding turnover tax.

Moreover, all negative consequences of loss on exchange, or otherwise stemming from untimely payment or non-payment, are at the expense of the buyer, even if the buyer would have complied in time with payment obligations in accordance with the existing regulations in his country, yet the transfer has taken place in a way that is disadvantageous to Merchandise.nl, as a result of circumstances or measures beyond the buyer's control.

5. Pursuant to article 6:44 of the Dutch Civil Code, payments will pertain in the first place to payment of the costs described in section 4, in second place to the payment of the amounted interest and lastly to payment of the principal and accrued interest.

6. In case a considerable deterioration occurs in the financial position of the buyer after the closing of the agreement, yet before the delivery of the goods, we are authorised to wholly or partly abandon the further performance of the agreement, or to demand an alteration in the payment conditions.

7. The seller can transfer his claims stemming from all transactions to a credit insurer of his choice.

## **Article 10. Force Majeure**

Force majeure includes all circumstances beyond our control and of such nature that compliance with the agreement by Merchandise.nl cannot be reasonably expected (non-ascribable performance shortcomings). Force majeure also includes: war, civil disturbances and hostilities of any nature, blockades, boycott, natural calamities, epidemics, lack or raw materials, hindrance and interruption of transport means, malfunctions within the company of Merchandise.nl, limitations to or prohibitions of import and export,

hindrances resulting from measures, laws or decisions by international, national and regional (government) organisations. In case we can not, not properly or not timely comply with our obligations, we are authorised to regard the agreement or the unperformed part as terminated, or to suspend it for a limited or unlimited period of time, at our discretion. In case of force majeure, the buyer cannot hold Merchandise.nl liable for payment of damages.

### **Article 11. Applicable Law**

Dutch law exclusively applies to all quotations made by Merchandise.nl and to all agreements entered into by Merchandise.nl

### **Article 12. Dispute settlement**

All disputes, regardless of their nature, regarding/ stemming from the agreements entered into by Merchandise.nl and deliveries performed by Merchandise.nl will be tried at the court of jurisdiction in the Netherlands.

### **Merchandise.nl BV**

Raambrug 36  
5531 AG Bladel  
The Netherlands

Chamber of Commerce Eindhoven: 66138329

VAT NR: NL8564.11.176.B01