



ESSENTIALS BV

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## **Terms & Conditions for Tailor Made Essentials B.V. limited liability company**

registered with the Chamber of Commerce in Arnhem with reference 09121561

### **Article 1 Applications**

- 1.1 These Terms & Conditions apply to all legal respects (including special offers, tenders and agreements etc.) which are established between Tailor Made Essentials B.V. (and any legal entities associated with it) hereafter referred to as: "TME" and any other (agreed) person, hereafter referred to as "the Contracting Party", insofar as TME and the Contracting Party have not expressly agreed otherwise in writing.
- 1.2 The application of any possible purchase or other conditions by the Contracting Party will be explicitly rejected by TME.
- 1.3 These Terms & Conditions apply equally to agreements in which TME involves third parties in the implementation.
- 1.4 If for any reason and concerning any stipulation of these Terms & Conditions no claim can be made, a corresponding significance wherever possible will be applied to this stipulation with regard to content and meaning, so that such a claim can be made. In such cases all other stipulations of these Terms & Conditions will remain undiminished in force.

### **Article 2 Special offers/realisation of agreements**

- 2.1 All special offers and tenders by TME are made without obligation and are issued on a 'subject to availability' condition. Special offers are valid for 14 days unless any other period is mentioned in the special offer.
- 2.2 When the Contracting Party places an order, the agreement comes into force once TME has accepted this in writing, and once the implementation thereof commences.
- 2.3 Illustrations, descriptions, dimensions and weights which appear in tenders or offers made by TME are not binding on TME and are intended solely to give an impression of the services to be delivered unless expressly mentioned otherwise.

### **Article 3 Prices**

- 3.1 All prices are net, excluding cost of transport taxes and charges (by which is included sales tax, import/export duties in cases of free delivery), unless explicitly agreed otherwise between TME and the Contracting Party. TME delivers as either carriage paid or ex Works.
- 3.2 If, after confirmation of the agreement, the prices of materials, raw products or semi-manufactured goods, salaries, premiums of any nature, carriage, taxes, currencies, exchange rates and/or other factors which affect the price of the goods or services, are subject to change which reasonably was not, or could not have been foreseen by TME, then TME is entitled to adjust the prices accordingly. The Contracting Party has the right to cancel the agreement and limit itself to payment of that which has already been supplied based on the prices in force before the increase.
- 3.3 An agreed price is only binding on TME when the agreed number of goods has been accepted from TME in its entirety by the Contracting Party and the invoice has been settled within the agreed period.

### **Article 4 Delivery**

- 4.1 Delivery will take place, unless explicitly agreed otherwise in writing, once the goods (in accordance with the agreement with the Contracting Party) have left the TME warehouse or factory (or at any rate the warehouse or factory of those who have produced the goods) or in any case delivery will take place on the date and/or time at which the Contracting Party has been informed by TME that the goods will be made available to them.
- 4.2 Liability for the delivered goods is transferred to the Contracting Party at the moment of delivery.

- 4.3 The Contracting Party is obliged to accept the goods purchased at the moment at which the goods are made available to it or at the moment when according to the agreement these would have been made available to it. If the Contracting Party refuses to accept or fails to collect the goods within 30 days, storage charges may be applied. The Contracting Party is required to ensure adequate loading and unloading facilities and as short a waiting time as possible for delivery. If the Contracting Party refuses delivery or is negligent in the supply of information, instructions or adequate loading and unloading facilities which are essential for delivery, TME is authorized to pass on any costs associated with this offer to the Contracting Party.

#### **Article 5 Delivery time**

- 5.1 A delivery time issued by TME is based on the circumstances in force at the time of the agreement and, insofar as being dependent on the performance of third parties, according to the details supplied by third parties. The delivery time is intended as an indication and not as a binding time. TME will make every effort to honour the agreed delivery time.
- 5.2 If the delivery time is delayed the Contracting Party has no right whatsoever to claim damages. Neither is the Contracting Party authorized to cancel the agreement or to suspend any liabilities arising from the agreement, unless the delay in delivery time is such that the Contracting Party cannot in reality be expected to comply with that particular part of the agreement or to not suspend its liabilities. Only in such a case is the Contracting Party authorized to cancel that particular part of the agreement or to suspend its liabilities directly arising from that particular part of the agreement.
- 5.3 If delivery of the goods on request is agreed, the client is obliged in all cases to take delivery of the goods within a period of 6 months after the realization of the agreement. If this period is exceeded TME has the right to claim from the Contracting Party for any damages arising thereof.
- 5.4 The delivery time comes into force on the day of the realization of the agreement.

#### **Article 6 Part-delivery**

- 6.1 TME is authorised to make deliveries in parts. This does not apply in cases where a part-delivery has no value by itself. If goods are delivered in parts, TME is authorized to invoice each part separately.

#### **Article 7 Transport/risks**

- 7.1 Transport takes place at the Contracting Party's own risk, irrespective of the time of delivery or of the transfer of possession.
- 7.2 If the goods are not collected by the Contracting Party any costs arising from this are the responsibility of the Contracting Party.

#### **Article 8 Deficiencies; dispute deadlines; return of goods**

- 8.1 The Contracting Party is required to examine the goods thoroughly on delivery. In so doing the Contracting Party is required to check that the delivery meets the requirements of the agreement, namely:
- that the correct goods have been delivered;
  - that the quantity and number of the goods delivered conforms to that which has been agreed;
  - that the goods delivered meet the requirements which may be expected through normal use and/or commercial purposes.
- If visible shortages or deficiencies are ascertained, the Contracting Party is expressly required to report that on the delivery form.
- 8.2 Deficiencies which are not outwardly visible require the Contracting Party to report this to TME within 14 days of discovering the deficiency (in writing, well-founded and with reference to the invoice date).
- 8.3 Any dispute about invoicing requires the Contracting Party to report this to TME in writing within 8 days of the invoicing date.
- 8.4 If the Contracting Party fails to report any deficiency on time, all rights to make a claim will lapse. The Contracting Party's right to compensation or replacement of goods delivered also elapses if the goods in question have been processed, adapted or not correctly stored.
- 8.5 Claims and demands, related to facts which would vindicate the supposition that the goods delivered are not in accordance with the agreement expire within 6 months of delivery.
- 8.6 The returning of goods will take place with the approval of TME. Goods returned without the consent of TME will be declined or TME will hold the Contracting Party responsible for payment and liability.

### **Article 9 Guarantees**

- 9.1 Goods delivered by TME satisfy the usual requirements and norms which can be reasonably expected at the time of delivery and which are applicable to normal use. TME guarantees no properties other than those which are contained in its product descriptions and specifications of the goods.
- 9.2 The guarantee is valid for a period of 6 months after delivery; however this can never be longer than that imposed on TME by the producer, manufacturer or importer.
- 9.3 All forms of guarantee will be invalidated in cases of injudicious or unfair use or of incorrect handling of the goods delivered.

### **Article 10 Ownership conditions**

- 10.1 Goods delivered by TME remain the property of TME until the Contracting Party has settled the amount due. In addition the ownership conditions apply to any claims which TME may have due to shortcomings by the Contracting Party in one or more of its commitments to TME.
- 10.2 Goods delivered by TME to which the ownership conditions apply may only be resold or used for normal commercial purposes. In cases of resale of the goods, the Contracting Party is obliged to stipulate ownership conditions with its buyers in TME's advantage.
- 10.3 The contracting Party is not permitted to mortgage the goods or to apply any other rights to them
- 10.4 Display material supplied on loan by TME such as racks, baskets and hooks remains the property of TME and may only be used for displaying TME products.

### **Article 11 Payment and assurances**

- 11.1 Payment must be effected within thirty days of the invoice date in the manner indicated by TME, in the currency specified, unless explicitly agreed otherwise in writing. TME retains the right to invoice periodically.
- 11.2 Disputes concerning the amount of an invoice do not reduce the obligation to pay.
- 11.3 If an invoice has not been settled within 30 days the Contracting Party is in default, even if an injunction or notice of default has not been issued. When a Contracting Party is in default, the settling of all unpaid invoices will be demanded immediately.
- 11.4 The Contracting Party is liable from the payment date onwards to pay interest on the overdue amount amounting to 1.75% per month, with a minimum of the legally binding interest rate, in which part of a month will be calculated as a complete month.
- 11.5 If an invoice has not been settled within thirty days the Contracting Party is liable for extrajudicial collection charges amounting to 15% of the outstanding amount, with a minimum of €250.00.
- 11.6 In cases of overdue payment, liquidation, bankruptcy or a moratorium of payment on the part of the Contracting Party, all payment obligations by the Contracting Party to TME will be demanded immediately, regardless of invoicing or agreed advance financing by TME and TME is thereby authorized to suspend or where appropriate to cancel any further completion of agreements with the Contracting Party, such an action not diminishing the right of TME to make claims for damages.
- 11.7 TME remains authorized to demand anything which they have to requisition, whether or not claimed or under condition of the Contracting Party; to seek settlement without a counter-claim by the Contracting Party against TME. In cases where the demands by TME on the Contracting Party cannot be claimed, TME will make no use of its settlement powers unless possession is made or recovery is otherwise sought, a limited commercial right is imposed or the Contracting Party transfers a counter-claim under a particular title. TME will wherever possible inform the Contracting Party in advance of the use of its settlement powers.
- 11.8 The Contracting Party is, if requested by TME, obliged to provide assurances at once and in a manner specified by TME, and to fulfil these assurances with respect to the compliance of all its responsibilities. For as long as The Contracting Party fails to provide this, TME is authorized to suspend its obligations.
- 11.9 If the Contracting Party fails to assure a suitable outcome within 14 days following a request to settle payment as defined in the previous section, all its liabilities may immediately be demanded.

### **Article 12 Liability**

- 12.1 TME is not liable to the Contracting Party for any damage, except where and insofar as the Contracting Party can prove deliberate or gross blame on the part of TME.

- 12.2 TME can only be held liable for replacement compensation, by which is meant compensation for output which fails to materialize. TME cannot be held liable for any other sort of compensation, in which is included:
- supplementary compensation in any form whatsoever
  - indirect losses
  - consequential loss;
  - compensation for potential losses;
  - compensation for delay;
  - compensation arising out of an inadequate supply of collaboration, information or materials by the Contracting Party;
  - compensation due to information or advice given by TME in which the content was not specifically part of a written agreement;
- 12.3 The liability of TME is expressly limited to amount that TME's insurers pay out in any particular case. If, for any reason whatsoever, no payment is made pursuant to a decision by TME's insurers, the liability is expressly limited to the total amount of the invoice in question and to a maximum amount of €5000.00.
- 12.4 The Contracting Party indemnifies TME against any compensation which TME might incur as the result of agreements between third parties which relate to the goods supplied by TME.
- 12.5 That which is specified in this Article leaves the liability of TME unimpeded in the context of legally binding conditions.

#### **Article 13 Force majeure (unaccountable failings in performance; 'Acts of God')**

- 13.1 TME is not bound to resolve any commitments towards the Contracting Party in which it has been impeded as the result of circumstances which cannot be proven to be its fault or intention, neither to which according to the law, a judicial decision or legitimate interpretation applies.
- 13.2 Force majeure in these Terms & Conditions includes, in addition to what according to law is understood to be a precedent, all forms of external causes, foreseen or unforeseen in which TME can exercise no influence, yet through which TME is not in a position to fulfil its responsibilities. This includes industrial action within the TME company or by third parties. TME also retains the right to declare force majeure whenever circumstances which (further) impede fulfilment of the agreement take effect after TME should have fulfilled its obligations.
- 13.3 TME may, during the period in which force majeure persists, suspend its obligations to the agreement. Should this period exceed two months, either party is entitled to cancel the agreement without any obligation for compensation to the other party.

#### **Article 14 Packaging**

- 14.1 Packaging not intended for single use remains the property of TME. The Contracting Party is obliged to return the packaging to TME. Return carriage is at the expense of the Contracting Party.
- 14.2 TME is entitled to specify a period in which the Contracting Party should return the packaging.

#### **Article 15 Cancellation**

- 15.1 Should the Contracting Party not, not timely or not adequately fulfil any obligation to an agreement with TME, whether or not caused by bankruptcy, moratorium or the Contracting Party being put into receivership, or shutdown or liquidation of the business; TME is authorised, with no further proof of default being required and without legal intervention or any claim to compensation whatsoever, and with all future rights undiminished; to cancel the completion of the agreement. In all such cases named in this section all claims by TME against the Contracting Party will be demanded with full and immediate effect.
- 15.2 If adequate compliance by TME of its responsibilities concerning an agreement with the Contracting Party, whether totally or partially and temporarily or permanently, is not possible as the result of one or more circumstances which cannot be attributed to TME, included in which are circumstances as detailed in Article 13, TME is authorized to cancel the agreement.
- 15.3 The Contracting Party is not authorised to cancel the agreement with regard to goods already delivered.

#### **Article 16 Applicable rights and choice of forum**

- 16.1 The Laws of the Netherlands apply solely to all legal (agreements) between TME and the Contracting Party, even when a contract is implemented either partially or completely in another country, or when the legally involved party resides there.
- 16.2 Disputes between TME and the Counter Party will solely be settled by the judicial authorities in the location where TME is registered, unless TME as claiming or petitioning party opts for the judicial authorities in the location where the Contracting Party is registered or resides, excepting where imperative legal conditions against it apply.
- 16.3 This English translation of the Terms and Conditions ('Algemene Voorwaarden') is for information only and has no legally binding status; the Dutch version will take precedence in all cases.