

General conditions of sale and delivery

E-Luscious Nederland B.V.

Domiciled and registered in Gorredijk (badweg 48, 8401BL)

GENERAL

1. All offers, contract and their implementation by E-Luscious Nederland B.V. (“seller”) shall be exclusively subject to the conditions under consideration regardless if these conditions are provided by us, or by any third party. A copy of these conditions is available upon request.
2. By “principal” in these conditions is understood: any (legal) entity which has entered into, or expressed the intention of entering into, a contract with the Seller, its representative(s), authorized agent(s), assignee(s) and heirs.
3. Deviations from additions to these conditions are only valid if confirmed by Seller in writing. The principal shall only (re)sell and deliver Sellers good under the conditions provided herein and shall oblige each successive party turn to apply these conditions when reselling or delivering the goods.
4. Any general terms and conditions of the principal are not applicable. The conclusion of a contract with Seller or acceptance of the delivery of Sellers’ goods is deemed to include an acceptance of these conditions with simultaneous revocation of the principal’s own conditions.
5. If the principal declares its purchase conditions applicable with the exclusion of other conditions, the conclusion of a contract with Seller or acceptance of the delivery of Seller goods is deemed to include an acceptance of these conditions with simultaneous revocation of the principal’s own conditions.
6. Seller is free to amend these General conditions of sale and delivery at any time entirely at its own discretion.

OFFERS

1. All offers made by us, in any form whatever, are free of all obligation, unless expressly stated otherwise.
2. In case an offer is accompanied with an estimation, plan, blueprint, catalogue or other documents, these will remain Sellers’ property and must be returned on Sellers’ first request postage paid. Without Sellers’ authorization all forms of reproduction and examination by any third party is prohibited.
3. Forwarding of offers and/or (other) documentation does not oblige Seller to accept an order. The principal will be informed by Seller of non-acceptance as soon as possible.
4. Seller reserves the right to deliver by reimbursement or to refuse orders without explanation.

CONTRACTS

1. Subject the following stipulations, a contract with Seller will be established only by Sellers' written acceptance by confirmation, while the date of confirmation shall be decisive. The confirmation of order is held to state the contract in an exact and complete way, unless the principal has immediately protested against it in writing.
2. Any subsequent supplementary agreements or modifications shall be considered binding only if confirmed by Seller in writing.
3. The invoice is held to state the contract in an exact and complete way for transactions for which according to their nature and extend, no offer or confirmation of order is sent out, unless objections to it are announced within 10 working-days.
4. All contracts are made by Seller under the suspensive condition, that principal appears-exclusively at Sellers' discretion – to have sufficient credit to allow the monetary fulfilment of the contract.
5. Seller are authorized – should Seller consider it necessary or desirable – after consultation with the principal, call upon other for the correct implementation of the order made to Seller pursuant to the contract, the costs of which shall be charged to the principal in conformity to the quotation made.

CANCELLATION

1. In case the principal wants to cancel a contract, Seller reserve the right to charge 10% of the order price (incl. VAT) as cancellation costs, while Sellers' rights to compensation of loss or damage remain intact.

PRICES

1. Unless otherwise stipulated Sellers' prices are:
 - based on delivery from Sellers' company, store or other accommodation free to carrier
 - exclusive of VAT, import duties, other taxes, levies and duties,
 - exclusive of the costs of packaging, unloading, transport and insurance,
 - in Dutch currency, any alterations in the exchange rate shall be charged.
2. In the case of increases in one or more of the cost price factors, Seller reserve the right to raise the agreed order price; this shall take into account any relevant legal obligations, with the understanding that future price-rises already known when the order was confirmed shall be stated.

DELIVERY

1. Good shall be delivered FCA ("free carrier") as referred to in the Incoterms 2020, unless otherwise agreed upon in writing between parties.

2. The principal is obliged to check the delivered goods or packaging immediately upon receipt, and if not, in any, case within 3 work days, for any shortcomings and/or damage, or to carry out said check after having been informed by Seller that the goods are at the disposal of the principal.
3. Any shortcomings and/or damage to the delivered goods and/or its packaging which are present at delivery shall be designated by the principal on the delivery receipt, the invoice and/or the transport documents; the absence of said designation shall be considered the equivalent of approval by the principal of the delivery, and no objections shall thereafter be considered.
4. Seller are entitled to deliver by instalments, which Seller may invoice separately.
5. Statement of the time of delivery always takes place approximately, unless expressly agreed otherwise in writing.
6. If the goods, after the expiration of the time of delivery, have not been collected by the principal, they will be stored at his disposal, at his expense and risk.

TRANSPORT/RISK

1. In the absence of further instructions to Seller by the principal, the method of transport, shipping, packaging, etc. shall be determined by us, as prudent and reasonable men. Unless otherwise agreed upon, the principal will bear all risks involved, including guilt/negligence of the transporter.
2. Any specific preferences on the part of the principal concerning transport/shipment shall be carried out only in the principal has declared itself prepared to bear the extra costs thereof.
3. Seller have the right to charge payment for any durable packaging materials used, which shall be duly listed on the invoice.

FORCE MAJEURE

1. Force majeure is understood to mean the following: all circumstances, unforeseen or occurring independent of the will of the parties, through which compliance with the agreement can no longer reasonably be demanded by the other party.
2. If, in Sellers' opinion, the force majeure will be of a temporary nature, Seller have the right to suspend the implementation of the agreement until such time that said force majeure is no longer in effect.
3. If, in Sellers' opinion, the force majeure will be of a temporary nature, the two parties can come to mutual agreement to the dissolution of the contract and the associated consequences.
4. Seller have the right to claim payment for work performed under the agreement concerned prior to the occurrence of the force majeure.
5. The party subject to force majeure shall immediately inform the other party of this fact.

INTELLECTUAL PROPERTY

1. The principal guarantees at all times that Sellers' use of any information or document provided by the principal, will not be contrary to any legal regulation or protected right of a third party.
2. The principal will secure Seller completely from all direct and/or indirect consequences of claims of third parties to Seller on account of violation of principal's guarantee as stipulated overhead.
3. All drawings, designs, sketches, models, etc., produced for the implementation of the order by Seller or on Sellers' behalf, are unalienable Sellers' property, as is the right of use thereof.
4. The principal will not register any trademarks, company names, brands, labels or other intellectual property rights owned by the Seller as a trademark, brand, domain name or social media account for principals' own benefit unless Seller has given approval in writing in advance.

LIABILITY

1. The provisions hereunder set out Sellers' entire liability vis-à-vis the principal. The limitations of Sellers' liability applies accordingly to Sellers' employees, affiliates, agents and sub-contractors. The principal hereby indemnifies Seller for claims by third parties.
2. In no event Seller will be liable for damages that are covered by indemnity insurance policy(ies) entered into by the principal.
3. Sellers' total aggregate liability in respect of (an) attribute failure(s) to perform any obligations under agreement and/or (a) wrongful act(s) or any other legal ground(s) shall cumulatively be limited to the amount that is paid out in the particular case under the (liability) insurance policy(ies) Seller have entered into.
4. If no payment is made under the said insurance policy for whatever reason, Sellers' total aggregate liability shall in no event cumulatively exceed the lower of either (i) the amount of paid for the goods by the principal under the said agreement (excluding VAT) or (ii) €25.000,- (twenty five thousand Euros).
5. Sellers' total aggregate liability in respect of death of personal injury shall in no event cumulatively exceed €50.000,- (fifty thousand Euros).
6. In no event will Seller be liable for any consequential, indirect, immaterial and punitive damage, loss of business profits, damage relating to business interruption or damages relating to exceeded deadlines.
7. Seller shall have no obligation or liability to the principal if the claim is made with the competent court after a period of one (1) year and six (6) months from date of delivery of the goods.

8. If Seller are prompted to recall any goods due to a product defect, the principal shall fully support Seller and undertake all measures reasonably requested by us.

COMPLAINTS

1. Complaints shall be accepted by Seller only in writing and if they have reached Seller – directly – within a period of 10 days, and include specific mention of the nature and basis of the objections in question.
2. Complaints about invoices shall likewise be submitted in writing within 10 days after invoice date.
3. After the expiration of the period, it shall be assumed that the principal has approved of the delivery and/or invoice, as the case may be, in which case complaints shall no longer be accepted by us.
4. Should the complaint be considered by Seller as well-founded, Seller shall then still be obliged only to comply with the specific delivery contracted.
5. Only if, and in so far as, the complaint is considered well-founded shall the obligation to pay be suspended until such time as the complaint has been resolved.
6. Return of the delivery shall be permitted only with Sellers' written permission, according to terms determined by us.

PROPERTY RIGHTS

1. Seller retain title to all goods supplied by Seller to the principal until the principal has paid the considerations(s) in relation to all these goods in full. The retained title shall also apply to any claim that Seller acquire vis-à-vis the principal on account of non-fulfilment of any agreement by the principal or on any other ground whatsoever, including interest and costs.
2. In case of bankruptcy, suspension of payment or liquidation of the principal, or decease (in case the principal is a natural person), any pending orders shall be cancelled automatically and Seller shall be entitled to take back the goods supplied by Seller subject to extended retention of title clause if any payment will then be due by the principal to us. Cancellation and the execution of Sellers' retention rights do not affect Sellers' right for compensation of loss or damages.
3. All deliverable goods retain Sellers' property – principal undertakes now for then, to the extent necessary to transfer the possession of the goods – as security for all that the principal for whatever reason will be liable to Seller at any time, provided this is validly stipulated pursuant to article 3:92 (2) of the Dutch Civil Code. Goods supplied by Seller which are covered by the retention of title may only be sold on in the context of normal business activities of the principal. Also, the principal shall not be entitled to pledge the goods which are covered by the extended retention of title of to establish any other right on them. This clause has effect under property-

law within the meaning of the article 3:83(2) of the Dutch Civil Code (“goederenrechtelijke werking”) and is binding on third parties.

4. The principal shall undertake to mark the goods supplied by Seller subject to retention of title as Sellers’ property and to insure them and keep them insured against damage and against theft to make the policy and the proof of premium payment of this insurance available to Seller for inspection in first demand.

PAYMENT

1. Unless otherwise agreed in writing payment should be made in cash on delivery, without any discount or by means of a deposit or transfer to a bank account Seller may specify, within 30 days after the invoice date. The exchange rate date indicated on Sellers’ bank statements is decisive and is therefore considered to be the date of payment.
2. All payments made by the principal are primary used in settlement of eventual interest and collecting costs Seller made, and secondary of the oldest unpaid invoices.
3. If it appears to Seller before the time of delivery that the principal is not creditworthy, if the principal does not properly or timely fulfill any obligation towards us, is the principal is declared bankrupt, had submitted a request for suspension of payment, disposes of his assets, calls in the receiver, or all or part of his assets are seized, dies or is placed in legal guardianship, fails to meet any of the contractual obligations imposed on him by the law or by these conditions, fails to pay an invoice sum of part thereof within the stipulated period, or is subject to stoppage or the transfer of his business or a significant part thereof, including of the incorporation of its firm in a company already existing or to be founded, or proceeds to change the goals of its firm Seller, have the right to dissolve to fulfilment of Sellers’ obligations to the principal or to suspend the agreements with the principal, without any notice or judicial intervention and without being obliged to pay any compensation, in whole or in part, without prejudice to Sellers’ other rights in such a case.
4. Seller are not obliged to fulfill any delivery obligation, as long as the principal does not comply with its payments obligations or commits any breach of these conditions, without prejudice to Sellers’ rights in this case, termination of the contract, reimbursement of all costs, damages and interest.
5. Seller can offset the amounts payable to Seller by the principal and/or other companies that form part of the same group as the principal with any amount payable by Seller and/or other companies that form part of Sellers’ group.
6. The principal shall not have the right to suspend, withhold or reduce any payments or to set-off existing and future claims against any payments due under any other agreement that the principal may have with Seller or any and agrees to pay the amount hereunder regardless of any claimed offset which may be asserted by the principal.

INTEREST AND COSTS

1. If payment has not been made within the period specified in the previous article, the principal will be legally in default and liable for interest of 1% per month (or a part of a month) from date of the invoice on the unpaid amount.
2. All legal and extra-legal costs shall be at the expense of the principal. The judicial costs include all actual costs of legal and procedural assistance during legal proceedings made which exceed the liquidation rate. The principal shall owe extra-legal collection costs of at least 15% of the amount due, including the aforementioned interest.

APPLICABLE LAW

1. All Sellers' offers, agreements and the performance thereof will be governed by the Law of the Netherlands only. The United Nations Convention on Contracts for the International Sale of Products shall not apply to any offer, confirmation or agreement between the principal and Seller.

DISPUTES

1. All disputes, including those which are regarded as such by one party only, resulting from or connected with the contract to which these conditions apply or the conditions involved themselves and their explanation or performance, both of factual and judicial nature, will be subject to the jurisdiction of the Civil Court of Sellers.
2. Nevertheless Sellers are entitled to have the dispute settled by arbitration, in which case Seller will notify the principal in writing. Then, during one month, the latter will have the opportunity to express itself in favor of settlement by the Civil Judge.
3. In the case that the dispute is decided by arbitration three arbiters shall sit in judgement justly and fairly. Each of the parties shall designate an arbiter and the third shall be designated jointly by the two already appointed. The expenses of the arbiters and their fees shall be borne by the parties in the manner decided by the arbiters. To the extent that it does not deviate from the foregoing, the provisions of Book IV of the Civil Code (Wetboek van Burgelijke Rechtsvordering) are applicable.