

GENERAL TERMS AND CONDITIONS (OF DELIVERY AND PAYMENT)

POTTERY POTS NEDERLAND BV

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Art. 1 Applicability

1.1 All offers are made subject to the applicability of these general terms and conditions of delivery and payment, such with respect to the offer itself, the acceptance of the offer, the order confirmation and the agreement that is subsequently concluded.

1.2 All offers are valid for the period of one month, unless otherwise specified in the offer.

1.3 The agreement is concluded as soon as Pottery Pots BV has received the acceptance of the offer and this is followed by an order confirmation to be sent to the buyer by Pottery Pots BV; it should be evident from this acceptance that the buyer agrees to the applicability of these general terms and conditions of delivery and payment and that the buyer, if necessary, renounces the applicability of any terms and conditions of purchase of his own.

Art. 2 Changes

2.1 Changes to the purchase agreement and deviations to these general terms and conditions of sale will only be considered valid if these have been agreed upon between the buyer and Pottery Pots BV in writing or verbally.

2.2 If such changes are to lead to an increase or reduction of the costs, then the subsequent change to the purchase price is to be agreed upon between the parties in writing.

2.3 In the event that the parties fail to reach consensus with respect to the change to the purchase price, then the resulting dispute between the parties will be subject to article 14 of these general terms and conditions of sale.

Art. 3 Quality and description

3.1 Pottery Pots BV binds itself towards the buyer to supply the goods in accordance with the description, quality and amounts as specified in detail in the offer. The buyer agrees to the fact that – and is aware that – the products are handmade, and so Pottery Pots BV cannot guarantee 100% likeness between the ordered products and the purchased products, which has no effect on the quality as promised and agreed upon.

3.2 Pottery Pots BV binds itself towards the buyer to supply goods that:

- have been manufactured with sound materials and that they are of solid construction;
- resemble in all respects and as much as possible any samples or models that have been made available or provided by Pottery Pots BV and/or the buyer (with the exception of that stated in paragraph 1 of this article);
- are described in the order confirmation.

3.3 The buyer can no longer appeal to a lack of performance if the buyer fails to lodge a claim with Pottery Pots BV within two weeks after he discovers the shortcoming, or should have reasonably discovered the shortcoming.

3.4 If the product(s) supplied is/are found to have a structural defect within two years after delivery, then the buyer, provided that he has subjected the goods to normal use, is to immediately inform Pottery Pots BV accordingly.

3.5 The buyer will have no right to lodge a complaint after a period of two years has passed.

Art. 4 Packaging and dispatching

4.1 Pottery Pots BV binds itself towards the buyer to adequately package the goods and to secure these in such a way that they will reach their destination in good condition provided that they are appropriately transported.

4.2 The goods will be delivered by Pottery Pots BV, or dispatched for the purpose of delivery, to the location or locations as agreed upon in the manner or manners as specified in the order or agreed upon at a later date.

4.3 Buyer agrees to – and is aware – that the transport is to mainly take place by water and that the terms of delivery can therefore not be guaranteed down to a specific day.

4.4 In the event that Pottery Pots BV has made loading pallets, packing cases, crates, containers, etcetera available for the packaging and the transport, or has engaged a third party to do so – whether or not on payment of a deposit or security – then the buyer is under the obligation (unless single-use packaging has been used) to return these loading pallets, et cetera, to the address as specified by Pottery Pots BV, in default of which the buyer will owe Pottery Pots BV compensation for damages.

4.5 Buyer binds himself to immediately inspect the goods in terms of amounts and transport damage upon delivery and, depending upon the outcome of the inspection, to proceed to sign/refuse to sign for the adequate delivery of the lot.

Art. 5 Transfer of ownership and risk

5.1 Subject to that stated in paragraphs 2 and 4 of this article, the ownership and the risk of the goods will be transferred to the buyer upon delivery, unless the parties have agreed otherwise (for example if the buyer pays for the transport and the ownership is transferred at of the time of shipping, the so-called Free on Board principle).

5.2 Pottery Pots BV reserves the right of ownership of the goods for as long as the buyer has not paid the purchase price, and any additional costs if applicable, in full or has not provided surety to that end. The ownership is to be transferred to the buyer in such cases as soon as the buyer has met all of his obligations towards Pottery Pots BV.

5.3 In the event that Pottery Pots BV has reasonable doubt regarding the payment capacity of the buyer, then Pottery Pots BV will be authorised to postpone the delivery of the goods further to article 4, paragraph 2, until the buyer has provided surety for the payment(s). The buyer will be liable for any damages suffered by Pottery Pots BV further to this postponed delivery.

5.4 If Pottery Pots BV postpones the delivery at the request of the buyer in accordance with that stated in article 5, then the goods will remain the property of Pottery Pots BV and will remain at the risk thereof, such until the goods have been supplied to the buyer and delivered at the location or locations as referred to in article 4, paragraph 2.

Art 6. Time and delivery

6.1 Pottery Pots BV will deliver the goods at the time specified in the order confirmation or immediately after the end of the term of delivery, respectively. If the parties have agreed on a term of delivery, then this term will commence on the date upon which Pottery Pots BV confirms the order.

6.2 Timely delivery will always take place subject to the condition that the current stocks allow for this. If this is not the case, then the buyer will receive notification in which Pottery Pots BV is to specify the expected deviating term of delivery, which term will not in any case exceed 150 days.

6.3 Any delays in the transport (which mainly takes place by waterways) will not give rise on the part of the buyer to dissolve the agreement and will not constitute any grounds to claim compensation for damages.

Art. 7 Circumstances beyond one's control

7.1 The term of delivery as referred to in article 6 is to be extended by the period during which Pottery Pots BV is prevented from meeting its obligations due to circumstances beyond its control.

7.2 Circumstances beyond its control on the part of Pottery Pots BV apply if, after having concluded the purchase agreement, Pottery Pots BV is hindered in observing its obligations further to this agreement or is hindered in the preparations relating to this agreement due to war, the threat of war, civil war, terrorism, riot, acts of war, fire, water damage, flooding, work strike, sit-down strike, exclusion, import/export restrictions, measures implemented by government authorities, defects to machines/equipment, malfunctions in the energy supply, such both at the company of Pottery Pots BV as well as at third parties from which Pottery Pots BV is obligated to purchase, either entirely or partially, the necessary materials or base materials, as well as during storage or transport, either under its own management or not, and furthermore due to all other causes (such as weather conditions) that come about outside the scope of blame and risk on the part of Pottery Pots BV.

7.3 In the event that the delivery is delayed for more than two months due to circumstances beyond one's control, then both Pottery Pots BV as well as the buyer will have the right to consider the agreement to be terminated.

7.4 If the circumstances beyond one's control occur after the agreement has been partially realised, then the buyer, should the remaining delivery be delayed for a period exceeding two months further to circumstances beyond one's control, will have the right to either keep the part of the goods already delivered, and the subsequent obligation to pay the purchase sum owed, or to consider the agreement terminated with respect to the part already realised, such subject to the obligation to send the goods supplied back to Pottery Pots BV at the expense and risk of the buyer, if the buyer can demonstrate that he cannot effectively use the portion of the goods already supplied as a result of the non-delivery of the remaining goods.

Art. 8 Guarantee

8.1 Pottery Pots BV accepts any liability for damages on the part of the buyer, or the buyers of the buyer, to and because of the goods, which come about during the warranty period of two years as specified in the order confirmation, unless the damages are the result of the buyer, or a buyer of the buyer, using the goods in violation of the directions for use as provided, or a result of an error on the part of the buyer during the use or transport. Liability can only come about if the goods cause damages in an empty state that is free of any form of use.

8.2 The liability of Pottery Pots BV is limited to the repair of a defective good, free of charge, or to the (partial) replacement of the good concerned, such at the discretion of Pottery Pots BV.

Art. 9 Price and payment

9.1 In addition to the price of the goods concerned, the purchase price also includes the price of the packaging, the transport and the costs of delivery at the location within the Netherlands as specified by the buyer.

9.2 The buyer is obligated to pay the purchase price in full within fourteen days following the delivery, unless the parties have deviated from this term of payment via the offer, the acceptance and the order confirmation (for example, an advance payment as agreed upon). The buyer is not entitled to deduct any amount from this purchase price further to a counterclaim that he has submitted.

9.3 If the buyer fails to timely comply with the payment obligations and also fails to act further to a notice of default with a term of one week, then Pottery Pots BV is entitled to deem the purchase agreement dissolved without the intervention of the court, and the buyer will be obligated to properly return the lot of goods to Pottery Pots BV. The buyer will in such cases be liable for damages suffered by Pottery Pots BV, consisting among other things of loss of profit, costs of transport (to and from) and the costs of declaring one to be in default.

9.4 In the event that Pottery Pots BV proceeds to take out-of-court measures further to the non-performance of the buyer, then the costs involved will be at the expense of the buyer. This concerns the costs with respect to the principal sum in accordance with the Compensation of Extrajudicial Costs Decree. These out-of-court costs amount to a minimum of € 40,- and a maximum, depending upon the principal sum, of € 6,775.-.

9.5 If the buyer fails to timely meet his payment obligations, then Pottery Pots BV will have the right to claim an interest percentage of 12% on the principal sum as of the date upon which the payment falls due.

Art. 10 Statutory requirements

10.1 Pottery Pots BV guarantees that the design, the composition and the quality of the goods that are to be supplied on the basis of the order comply in every respect with the relevant requirements that apply by law and/or further to requirements set by the government authorities, as these are in force at the time that the purchase agreement is concluded.

10.2 That stated in paragraph 1 applies with respect to the normal use of the goods.

Art. 11 Dissolution

11.1 Without prejudice to that stated in art. 9, the purchase agreement is to be dissolved (without the intervention of the court), insofar as it has not been fully observed by the buyer, further to a written statement at the time that the buyer is declared to be bankrupt, files for a (provisional) moratorium on payments or loses the authority to dispose of his property or parts thereof further to an attachment, guardianship order or for some other reason.

11.2 As a result of the dissolution, any claims on the part of Pottery Pots BV will become payable on demand. The buyer is responsible for the (return) delivery of the goods and is liable for any damages suffered by Pottery Pots BV, such further to a loss of profit and costs of transport, among other things.

Art. 12 Applicable law

This agreement is subject to Dutch law.

Art. 13 Applicability of these general terms and conditions

These general terms and conditions apply to all offers and acceptances on the part of Pottery Pots BV. Insofar as Pottery Pots BV is to refer to any other terms and conditions in its offer or acceptance, the applicability of such terms and conditions is explicitly rejected.

Art. 14 Disputes

14.1 Any and all disputes that may arise between the parties, this further to their agreement and/or subsequent agreements and other operations relating to the agreement in hand, such as but not limited to wrongful acts, undue payments and unfounded enrichments, will be settled by the Court in the province of Noord-Holland, Netherlands, except insofar as mandatory competence regulations prevent this course of action.

14.2 A dispute is deemed to be present as soon as one of the parties states that such is the case. All disputes are subject to Dutch law.

Company details

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