

# General terms and conditions of delivery and payment of Fashion Power

**Having its registered office and principal place of business in Zundert, The Netherlands registered with the Chamber of Commerce**

## **GENERAL**

1. These general Terms and Conditions of Delivery and Payment apply to the preparation, content and performance of all agreements entered into with Fashion Power B.V, in which Fashion Power acts as (potential) supplier of goods and/or services. These Terms and Conditions also apply to agreements entered into hereafter. The applicability of other terms and conditions is exclusively to the agreement concerned.

2. In these Terms and Conditions “Fashion Power” means: the company with limited liability Fashion Power B.V., established and having its offices at Zundert, the Netherlands. The term “the other party” in these Terms and Conditions means any natural person or legal entity that has entered or intends to enter into an agreement as meant in subsection 1 of this section with Fashion Power.

## **OFFERS**

1. All offers from Fashion Power shall be completely without engagement.

2. In the case of composite quotes, partial orders cannot be guaranteed at a proportional price.

3. All specifications shall be given as accurately as possible, but should always be seen as an approximation only, without any obligation of conformity. The same applies to all samples, catalogues, drawings, models budgets, plans and other documents. All materials and information provided as part of an offer shall remain the property of Fashion Power and must be returned to Fashion Power postage-paid at its first request.

4. If, having requested an offer, the other party does not wish to enter into an agreement, Fashion Power shall be entitled to charge all expenses incurred in connection with the offer to the other party.

## **AGREEMENTS**

1. An agreement shall not become effective until it has been accepted in writing by Fashion Power, of Fashion Power commences performance of the agreement.
2. The text of the contract and/or the order confirmation shall include the entire agreement. Additions and/or amendments to the agreed performances shall only take effect upon written acceptance by Fashion Power, or after Fashion Power has commence such performance. Fashion Power shall be entitled to charge for all additions and amendments at the prevailing rates and adjust the agreed delivery time accordingly. Fashion Power will not warrant that the goods are suitable for the purpose for which the other party wishes to use them, not even if this purpose has been indicated to Fashion Power.
3. The other party shall be obliged to supply Fashion Power with all relevant information, document and materials which may reasonably considered to be necessary for the proper performance of the agreement, both prior to and during the performance of the agreement. If Fashion Power is of the opinion required relevant information is not provided, Fashion Power shall be entitled to suspend its obligations under the agreement.
4. If it is of the opinion that the involvement of such parties will be conducive to the proper performance of the agreement, Fashion Power shall be entitled to involve third parties in the performance of the agreement.
5. In the case of agreements involving more than one person, each of them shall be jointly and severally liable.
6. The other party is not entitled to transfer its rights and obligations under the agreement to third parties. This consequently prohibits transfer by property law.

## **IMAGE FASHION POWER AND FASHION POWER BRANDS**

The reputation of Fashion Power as a reliable and professional party with social status is of the utmost importance. This reputation needs to be protected and strengthened by impeccable, professional behavior. Fashion Power desires from the other party it trades in conformity with reputation, image and professional standards of Fashion Power and the other party accepts the responsibility to maintain and enforce this reputation.

## **PRICES**

1. Unless otherwise agreed upon, the prices stated are for delivery form Fashion Power's warehouse/offices (ex works), are excluding VAT and other levies imposed by the government, and also exclude costs not specifically stated in the agreement, such as packaging, transport, loading, unloading and insurance.

2. If wages or costs of production or materials should increase after agreement has been concluded, Fashion Power shall be entitled to charge such increases on to the other party. In the case of increases in excess of 10% within three months of the conclusion of the agreement, Fashion Power shall notify the other party in advance. The other party shall then be entitled to cancel the agreement in writing at no cost, unless Fashion Power nevertheless wished to continue the agreement at a reduced rate, or without an increase.

3. Unless stated otherwise, all prices are in Euro. Exchange rate fluctuations shall be charged on to the other party.

## **CANCELLATION**

In the event that the other party wishes to cancel the agreement, Fashion Power shall be entitled to charge 15% of the agreed overall price as cancellation costs. Fashion Power reserves the right to claim compensation in full for all losses of capital and other losses. Fashion Power shall never be obliged to accept a cancellation.

## **INSPECTION AND AUDIT**

The other party has the right to inspect and/or control the process with regard to the production of goods, if such a right is agreed upon in writing with formation of the agreement and a confidentiality and/or nondisclosure agreement is concluded. The costs of inspections and/or control shall be borne by the other party.

## **DELIVERY AND RISK**

1. All deliveries shall be from Fashion Power's warehouse/offices (ex works), unless agreed upon otherwise. The risk transfers to the other party at the moment of delivery. Goods shall be considered to have been delivered as soon as they are ready for transport at Fashion Power's premises. Services shall be considered to have been delivered as soon as Fashion Power has notified the other party. In case parties refer to an Incoterm of the I.C.C. Incoterms concerning the method of delivery, this method of delivery with the associated risks shall be determined by the respective Incoterm. Unless agreed upon otherwise, the other party is at all times obliged to take care for a proper insurance, which covers the risk of loss, damage or theft of the goods. Fashion Power is entitled to suspend its obligations under the agreement as long as the other party has not shown proof of proper insurance to Fashion Power. Fashion Power is not liable for any damage of the other party resulting from such a suspension.

2. If the goods and/or services to be delivered consist of separate components, Fashion Power shall be entitled to make partial deliveries and to invoice for each such partial delivery separately.
3. Fashion Power shall be entitled to deliver goods which differ slightly from the agreement, provided this results in an equal or better result for the other party.
4. The terms of delivery stated have been estimated as accurately as possible, and Fashion Power shall make every effort to comply with them; however, they should only be regarded as approximate. The term of delivery shall commence only upon receipt of all relevant information, materials, advance payments and confirmation of L/Cs.
5. Fashion Power shall inform the other party if the term of delivery is likely to be exceeded, and state the new delivery time. If Fashion Power fails to do so, the other party may set a reasonable new delivery time in writing. If a term of delivery is exceeded, Fashion Power shall never be liable to pay any compensation whatsoever; however, after a period of four weeks following written notice of default, the other party shall be entitled to (partially) dissolve the agreement in writing if the late delivery is attributable to Fashion Power and performance of the non-fulfilled part of the agreement cannot reasonably be expected of the other party.
6. The other party shall be obliged to accept the goods on the agreed date of delivery. Should the other party fail to accept the goods delivered on the agreed date of delivery, Fashion Power shall be entitled to store the goods or have them stored at the other party's risk and expense, and/or to consider the agreement null and void after a period of seven days, and to charge the other party accordingly.

## **TRANSPORT**

1. At the request of the other party or if the proper performance of the agreement so requires, Fashion Power may arrange for the transport of the goods delivered to the other party's registered address or another address specified by the other party.
2. All transport shall be at the risk and expense of the other party, unless agreed upon otherwise. The other party is obligated to take out adequate insurance at all times. The other party is obliged at all times to submit on first demand to Fashion Power a copy of the policy of insurance which proves the coverage of this insurance. Fashion Power is obliged to suspend its obligations under the agreement as long as the other party has not shown evidence of proper insurance to Fashion Power. Fashion Power is not liable for any damage of the other party resulting from such a suspension.
3. The means of transport, transporter, packaging and route shall be determined by Fashion Power in its best estimation, unless the other party has given explicit instruction in this respect and agreed to bear any additional costs involved.

## **FORCE MAJEURE**

1. Upon the occurrence of circumstances which are beyond the control of Fashion Power or make the normal performance of the agreement impossible or unreasonably onerous, the parties' obligations to one another shall be suspended until such circumstances no longer exist.
2. "Force majeure" shall be considered to include catastrophes, natural disasters, government measures, war, riots, strikes, unusual stagnation in production or transport, exception sickness absenteeism, and any other unforeseen circumstances which affect the operations of Fashion Power and/or its suppliers.
3. Should the situation of force majeure last for longer than three months, either party shall be entitled to dissolve the agreement in writing. Following dissolution, Fashion Power shall be entitled to invoice the other party for the performance delivered by Fashion Power prior to the situation of force majeure. The parties shall not be entitled to any form of compensation in this respect.

## **RETENTION OF TITLE**

1. All goods delivered shall remain the property of Fashion Power until the other party has performed in full all its obligations to Fashion Power by virtue of any deliveries made and to be made, including the obligations arising from the failure to fulfil any undertakings.
2. The other party shall be obliged to keep all goods recognizably as being the property of Fashion Power, and to store these separate from other, similar goods.
3. Until the property transfers to the other party, the other party shall not be entitled to create rights in respect of the goods delivered or to give the goods in use to a third party under any title whatsoever.
4. If the goods delivered are to be processed, altered or mixed, Fashion Power shall immediately acquire a right of co-ownership to the good/goods they are incorporated in, up to an amount equal to the value of the goods delivered.
5. The other party shall be entitled to use or sell the goods delivered only in the course of its normal business operations and in accordance with their purpose. In the event of the re-sales of goods which still are the property of Fashion Power, or of goods to which Fashion Power has right of co-ownership, the other party shall be obliged to claim a similar retention of title for the benefit of Fashion Power as included in these Terms and Conditions. In the event of the re-sales of goods the amounts receivable by the other party from its customer shall be pledged with notice to the customer, if this situation arises, which means the customer shall include in its invoice or sales agreement the amounts receivable resulting from such an agreement are pledged with notice to the buyer for the benefit of Fashion Power and payment must be made into a bank account

made available by Fashion Power. If such a payment is received by Fashion Power, Fashion Power shall inform the other party as soon as reasonably possible. Fashion Power is always entitled at the moment of delivery following such re-sale, to notify the customer of the other party of this pledge in respect of the amounts receivable by the other party from its customer and demand and receive payment.

6. In the event that the other party fails to fulfil any contractual obligation on time, or has been or is liquidated or dies or applies for a moratorium judicial postponement of payment of debts, or a petition for its winding up or bankruptcy is or has been filed, Fashion Power shall be entitled to consider the agreement cancelled by the other party and to demand the return of all goods not or not fully paid for as its property, without notice of detail or judicial intervention being required.

7. Following cancellation and repossession of goods, Fashion Power shall be entitled to charge cancellation and repossession costs to the other party, without prejudice to its right to compensation for all loss of capital and other losses.

8. The other party shall immediately give Fashion Power at its first request all information and assistance required to enforce rights of pledge and enable Fashion Power to gain repossession, subject to a penalty of EUR 1,000 per day. The other party herewith authorizes Fashion Power irrevocably to enter all sites and buildings where its goods may be stored, or to have third party enter these.

## **INDUSTRIAL PROPERTY RIGHTS**

1. Fashion Power shall retain all industrial and/or intellectual property rights on deliveries, relating to drawings, models, brands, copyright, product specifications, design, packaging, software etc. By entering into agreement the other party agrees to refrain from all breaches of Fashion Power's industrial/intellectual property rights, even if no registration of such has taken place, as well as to make every effort to prevent or terminate breaches by third parties. The other party is not allowed to use acquired information in any other way but in the proper performance of the contract.

2. Without prior written approval of Fashion Power, the other party is not allowed to alter goods delivered in whole or in part or provide them with another brand name.

3. The other party guarantees that the assignment or information it has provided does not breach any rights of third parties or statutory regulations, and fully indemnifies Fashion Power against all claims by third parties.

## **GUARANTEE**

1. Fashion Power will only provide a guarantee if this is agreed upon writing. Any manufacturers' warranties on goods acquired from third parties will be provided to the other party subject to the applicable regulations.
2. The guarantee provided expires if the other party uses the goods delivered other than in accordance with instructions and for their purpose, or does not properly use, maintain, repair or alter them, or fails to fulfil its obligations under the agreement.

## **COMPLAINTS**

1. The other party is obliged to check all goods and services immediately upon receipt for visible defects damage and shortcomings, and to report such to Fashion Power immediately in writing. All other complaints concerning goods or services delivered or invoices must be reported to Fashion Power in writing within 8 working days. The grounds for the complaint must be stated correctly and in full detail, accompanied with evidence. If the other party complains, Fashion Power shall be provided an opportunity for a local inspection of the goods within 8 working days. The other party shall make the necessary facilities available free of charge.
2. If no complaint is received within the above period and/or when the goods delivered are processed, the delivery or invoice shall be considered to have been accepted and all rights to lodge complaints in this respect shall lapse.
3. Deviations from Fashion Powers' quality of delivery common in The Netherlands must be agreed in writing in advance. Minor and/or usual deviations in the quality of quantity of deliveries (including quantity, dimensions, selection, colour, weight, version or design) shall never be grounds for any complaint.
4. If a complaint is judged by Fashion Power to be founded, Fashion Power shall deliver the agreed performance within a reasonable term unless Fashion Power chooses to credit the other party for the performance or partial performance concerned. If Fashion Power chooses to credit the other party, the other party's obligation to pay will be suspended, maximum to the amount equal to the credit amount.
5. If Fashion Power rejects a complaint lodged within the prescribed period, and the other party presses its claim, Fashion Power is entitled to have an independent expert or inspection institute draw up a report. Such report shall be binding on both parties and the costs involved shall be for the account of the party which is found to be in the wrong.
6. In the case of unfounded or late complaint, Fashion Power shall be entitled to charge all costs incurred in this respect to the other party.

7. The return of goods delivered shall take place at the risk and expense of the other party, subject to the prior written approval of Fashion Power and the conditions set by Fashion Power in this respect.

## **LIABILITY**

1. All goods and services shall be delivered by Fashion Power to the best of its ability, though Fashion Power will never accept liability for any damages whatsoever, including but not limited to direct loss or damage, indirect loss or damage, loss of profit, loss of goodwill and loss or damage to third parties. The other party is advised to take out sufficient insurance.

2. All advice is issued by Fashion Power in good faith, but remains free of obligation and Fashion Power accepts no liability for the consequences.

3. The other party shall be obliged to indemnify Fashion Power against all claims for compensation by third parties.

4. All employees of Fashion Power and third parties brought in by Fashion Power may refer to these provisions, as if they themselves were party to the agreement.

5. The stipulations in this section shall apply to the liability of Fashion Power, undiminished by imperative law, for example with regard to the possible compensation of damage as a direct result of gross negligence or intent of Fashion Power.

## **DEFAULT AND DISSOLUTION**

1. In the event that the other party fails to fulfil any contractual obligation on time, or has been or is liquidated or dies or applies for a moratorium judicial postponement of payment of debts, or a petition for its winding up or bankruptcy is or has been filed or its assets are attached, Fashion Power can declare all or part of all amounts owed by the other party to Fashion Power immediately payable in full and Fashion Power shall have the right to dissolve all agreements without notice of default or judicial intervention being required, to suspend further deliveries and/or claim payment in full of all receivables, without prejudice to Fashion Power's right to compensation in full for all loss of capital and other losses.

## **RETENTION**

Should the other party fail to fulfil its obligations, or to provide adequate security, Fashion Power shall have the right to retain all goods which are in its custody and control on behalf of the other party. Fashion Power shall also have this right of retention for any outstanding amounts of the other party in relation to previous agreements.

## **PAYMENT**

1. Unless otherwise agreed upon, all payments must be transferred to a bank or giro account to be stated by Fashion Power within 30 days of the date of invoice. The other party is not entitled to any suspension, reduction, set-off or attachment by a debtor in respect of a counterclaim against Fashion Power, unless and insofar specifically agreed to by Fashion Power in writing.
2. The other party shall be in default, without notice being required, by the mere failure to observe the agreed payment period; all discounts granted shall immediately lapse with retrospective effect.
3. Payments must be made in the currency specified in the agreement or, if no currency is stated, in the currency in which the invoices are drawn up.
4. All payments – irrespective of other instruction – shall be applied as follows: first (extra-)judicial and other legal costs incurred, subsequently interest due and then the oldest invoice outstanding.
5. On the first request of Fashion Power, both prior to and following the conclusion of each agreement, the other party is obliged to provide in, and if necessary supplement, all securities in any by Fashion Power requested form, to ensure the correct fulfilment of all obligations of the other party, or to pay all or part of the outstanding amounts in the manner determined by Fashion Power. If the other party does not provide in the requested securities within a term set out in a written request from Fashion Power, and if this is not done, within a fortnight after Fashion Power's aforementioned written request, Fashion Power is entitled to postpone all its obligations and all amounts owed by the other party to Fashion Power shall become immediately payable in full.

### **INTEREST AND COSTS**

1. In the event that all the agreed payment term is exceeded, the other party shall be liable to pay interest at a rate of 1% per month on all outstanding amounts, with part of a month being counted as a whole month.
2. All collection charges shall be for the other party's account. The extrajudicial costs will amount to at least 15% of the total claim including interest.

### **APPLICABLE LAW AND DISPUTES**

1. All agreements entered into with Fashion Power shall be governed exclusively by Dutch law, in terms of their conclusion, content and performance. The applicability of the CISG is excluded.
2. The conditions of trade and delivery are set in accordance with the "I.C.C. Incoterms", as most recently laid down by the International Chamber of Commerce in Paris.
3. Any disputes relating to the conclusion, content and performance of all agreements entered into with Fashion Power shall be submitted for arbitration to the competent

court in the place(s) of business of Fashion Power. Fashion Power shall be entitled, however, to submit a dispute to the court which is competent to hear this by operation of law or by virtue of international treaties.

4. Fashion Power is always entitled to settle disputes with a non-EU other party and member of the New York Treaty through arbitration pursuant to the current applicable rules of the Netherlands Arbitration Institute (NAI), notwithstanding the rights of each party as accorded in sub-paragraph 3 regarding jurisdiction of the competent court when demanding precautionary legal measures. The Netherlands Arbitration Institute (NAI) is exclusively authorized to take note of such disputes. Arbitration shall be executed by one (1) arbitrator, appeal is excluded, the place of arbitration shall be in Breda, the Netherlands and the language for the arbitration proceedings shall be English.

5. The Terms and Conditions as drawn up in the Dutch language shall be valid and decisive in case of contrariness of differences in interpretation between the Dutch text and a translation thereof.

#### **FINAL PROVISIONS**

1. If and to the extent that any conditions of a contract or these Terms and Conditions is declared null and void, the legal stipulation which is most similar to the import of the condition concerned will replace this. The other conditions will remain in full force.
2. Fashion Power shall be entitled to amend its conditions of trade. New Terms and Conditions of Delivery and Payment will take effect the moment that the other party is notified of such.