

## **GENERAL TERMS & CONDITIONS**



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General Terms and Conditions for CURVYFASHIONUSA.COM by **Justa** (AS 133G-12) 01-JUL-2014

### **Article 1: Applicability / Definitions**

1. These General Terms and Conditions shall apply to all offers and all purchase and sales agreements of Curvyfashionusa with its registered office in Palatka, Florida USA, hereinafter referred to as "the Seller".
2. The other party/customer shall be hereinafter referred to as "the Buyer".
3. "In writing" for the purposes of these General Terms and Conditions shall mean: by letter, e-mail, fax or any other mode of communication that is regarded as equivalent to writing in view of advances in technology and conventional practices.
4. The possible invalidity of (any part of) a provision contained in these General Terms and Conditions shall not affect the validity of the remaining provisions.
5. In the event of a discrepancy or conflict between these General Terms and Conditions and a translation hereof, the Dutch text shall prevail.
6. These General Terms and Conditions shall also apply to subsequent orders and part orders flowing from the agreement.
7. A lasting business relationship shall exist if the Seller has already handed these General Terms and Conditions several times to the Buyer. If this is the case, the Seller shall not be obligated to produce these General Terms and Conditions in order for them to apply to each new agreement.

### **Article 2: Offers, Proposals, Prices**

1. Each offer and each proposal by the Seller is in force during the term referred to in the offer or proposal. An offer or proposal without a validity term is without engagement. The Seller is entitled to withdraw an offer or a proposal if this offer or proposal is without engagement, within 2 working days after receipt of the acceptance at the latest.
2. The prices stated in offers, proposals or price lists are exclusive of BTW (Dutch VAT) and possible costs, such as transport costs, shipping costs, administrative costs, handling fees and expense claims of third parties engaged.
3. A composite offer or proposal does not obligate the Seller to deliver part of the offered performance against a corresponding part of the price.
4. If the offer or proposal is based on information provided by the Buyer and this information appears to be incorrect or incomplete or should change at a later date, the Seller shall have the right to adjust the prices and/or delivery terms stated.
5. The offer, the proposal and the prices do not automatically apply to repeat and/or partial orders.
6. Samples and models that are displayed and/or provided and specifications of colours, dimensions, weights and other descriptions in brochures, promotional material and/or on the Seller's website shall be as accurate as possible but shall only be intended as a guide. The Buyer may derive no rights from these.
7. The samples and models provided shall remain the property of the Seller and must be returned to the Seller on demand at the expense of the Buyer.
8. If (cost) price-increasing circumstances occur at the expense of the Seller between the date of concluding the agreement and the execution thereof, due to legislation and regulations, government measures, currency fluctuations or price changes of the required materials and/or raw materials, the Seller shall have the right to increase the agreed prices and charge these to the Buyer.

### **Article 3: Establishing Agreements**

1. The agreement is established after the Buyer has accepted the offer by the Seller, also if this acceptance deviates on secondary issues from this offer. However, when the acceptance of the Buyer shall deviate in essential aspects, the agreement shall only be concluded if the Seller has explicitly agreed with these deviations in writing.
2. The Seller shall only be bound to:
  - a. an order without prior offer thereto;
  - b. oral agreements;
  - c. additions to or changes of the General Terms and Conditions or agreement;

only after written confirmation to the Buyer or as soon as the Seller - without objection of the Buyer - has started the performance of the order or arrangements.

#### **Article 4: Engaging third parties**

If required for the proper execution of the agreement according to the Seller, it shall have the right to have specific deliveries carried out by third parties.

#### **Article 5: Obligations of the Buyer**

1. The Buyer must ensure that it shall make all information required for the execution of the agreement available to the Seller in time and in the manner required by it, and that the information is correct and complete.
2. The Buyer may only sell items delivered by the Seller in the original packaging from the Seller or its supplier. The Buyer must not make any changes to the original packaging and shall prevent any damage.
3. If the above obligations are not fulfilled in full or on time, the Seller shall have the right to suspend the execution of the agreement until the time that the Buyer has fulfilled its obligations. The costs in connection with the delay obtained and the other consequences arising from this shall be at the expense and risk of the Buyer.
4. If the Buyer fails to comply with its obligations and the Seller fails to require performance by the Buyer, it shall not affect the Seller's right to require performance at a later date.
5. The Buyer shall be obligated to charge its own customers the respective sale price or minimum sale price set by the Seller or its supplier. If the Buyer fails to do so, it will be subject to an immediate and fully payable forfeit of \$ 500.00 per contravention, without prejudice to the Seller's right to claim full compensation.
6. The Buyer has the full right to refuse selling items to its own customers, potential customers and indirect customers supplied by third parties if certain criteria's are being violated. The Buyer will be obligated to highlight this matter if it is not in accordance with its guidelines.

#### **Article 6: Delivery, Delivery terms**

1. Agreed delivery terms shall never be considered as strict deadlines. If the Seller fails to meet its delivery obligations in full or on time, the Buyer must give notice of default to him and grant reasonable time to meet these delivery obligations at a later date.
2. The Seller is entitled to deliver in phases, whereby each partial delivery may be invoiced separately.
3. The risk concerning the items to be delivered shall pass to the Buyer at the time of dispatch. This is the moment that the items to be delivered will leave the premises, the warehouse or the shop of the Seller, or the moment that the Seller has informed the Buyer that it may collect the items.
4. Dispatch or transport of the items shall take place at the expense and risk of the Buyer in a manner to be decided by the Seller. The Seller is not liable for any damage of whatever nature – whether or not to the items themselves – that is related to the dispatch or the transport.
5. If the Seller delivers the items itself to the Buyer, the risk relating to the items will pass at the moment that these items arrive at the Buyer's location and are in fact at its disposal.
6. If it appears impossible, due to a cause within the risk area of the Buyer, to deliver the items ordered (in the agreed manner) to the Buyer, or if these items is not collected, the Seller shall have the right to store the items at the expense and risk of the Buyer. The Buyer should enable the Seller after giving notice of the storage, within a term to be fixed by the Seller, to deliver the items within the term fixed or collect the items within this term.
7. If the Buyer still fails to meet its purchase obligation after the term referred to in the previous paragraph, it shall be immediately in default. The Seller shall then have the right to fully or partially terminate the agreement with immediate effect by a written statement and to sell the items to third parties without the Seller being obliged to compensate any damage, cost or interest arising from this. The aforesaid shall not affect the Buyer's obligation to compensate any (storage) costs, loss due to delay, lost profits or any other damage or the right of the Seller to claim fulfillment at a later date.
8. An agreed delivery term will not take effect until the moment that the Seller has received all information required for the delivery and the possible agreed (advance) payment of the Buyer. If delay arises from this, the delivery term shall be extended accordingly.

#### **Article 7: Packaging**

1. Packaging that is designed to be used several times shall remain the property of the Seller. This packaging may not be used by the Buyer for any purpose other than for which it is designed.
2. The Seller shall determine if the packaging must be returned by the Buyer or that it shall collect the packaging itself and at whose expense it will be conducted.
3. The Seller shall be entitled to charge the Buyer a fee for this packaging. If the packaging is returned by the Buyer for free within the term agreed, the Seller must take back this packaging and pay back the fee charged for this to the Buyer or deduct it from the fee that the Buyer has to pay for packaging on the following delivery. The Seller shall at all times have the right to deduct a 10% handling fee from the amount to be paid back or settled.
4. If the packaging is damaged, incomplete or has been destroyed, the Buyer shall be liable for the damage and its entitlement to a repayment of the fee shall lapse.

5. If the damage referred to in the previous paragraph is higher than the fee charged, the Seller shall not have to take back the packaging. The Seller shall then have the right to charge this to the Buyer at cost price, deducted by the fee paid by the Buyer.
6. Packaging for single use does not have to be taken back by the Seller and may be left at the Buyer's. Possible costs for removal of this packaging from the Buyer's premises shall be at the expense of the Buyer.

#### **Article 8: Complaints and Returns**

1. The Buyer shall be obligated to check the items delivered immediately upon receipt and to state any visible deficiencies, defects, damages and/or discrepancies in quantity on the waybill or consignment note and e-mail within 24 hours after receiving items to. In the absence of a waybill or consignment note, the Buyer shall be obligated to inform the Seller in writing / by e-mail as to any deficiencies, defects, etc., within 24 hours of receiving the items. ALL CLAIMS MUST BE MADE WITHIN 5 DAYS OF RECEIPT OF GOODS, Your request will be handled through our customer service, you will be contacted by e-mail about the process. NO RETURNS WILL BE ALLOWED WITHOUT PRIOR WRITTEN AUTHORIZATION AND WILL BE ACCEPTED WITHOUT RA NUMBER AND/OR LABEL.
2. Other complaints shall be reported in writing to the Seller immediately after discovery but no later than the agreed guarantee period. The Buyer shall bear all risks of failing to report directly. If no explicit guarantee period has been agreed, the period of one season up to one year following delivery shall apply.
3. If a complaint has not been lodged with the Seller within the terms referred to in the previous paragraphs, it will not be possible to make a claim under the agreed guarantee.
4. Items ordered shall be delivered in the (wholesale) packaging in stock at the Seller's and/or the minimum quantities or numbers. Small differences in view of specified measures, weights, numbers, colors etc., acceptable within the industry, are not considered as failures on the part of the Seller. In such event, it will not be possible to make a claim under the guarantee.
5. Complaints shall not suspend the Buyer's payment obligations.
6. The Buyer must give the Seller the opportunity to investigate the complaint and must provide all information to the Seller that is relevant for the complaint. If the items need to be returned for investigating the complaint, this will be at the expense of the Buyer unless the complaint appears well-founded. The transport risk will always be borne by the Buyer.
7. In all cases, returning the items shall take place in a manner to be determined by the Seller and in the original packaging or deposit packaging.
8. No complaints can be lodged in respect of imperfections in or characteristics of items produced from natural materials, if these imperfections or characteristics are inherent to the nature of these materials.
9. No complaints can be lodged about discolorations and small color deviations.
10. No complaints can be lodged about items that have changed in nature and/or composition or that have been fully or partially treated or processed.

#### **Article 9: Guarantees**

1. The Seller shall ensure that the agreed deliveries are carried out appropriately and in accordance with the standards applicable in its sector, but shall never give further guarantee in respect of these deliveries than explicitly agreed between parties.
2. The Seller shall be responsible during the guarantee period for the usual quality and reliability of the items delivered.
3. If the manufacturer or supplier provides a warranty for the items delivered by the Seller, this warranty shall apply in the same manner between the parties. The Seller shall inform the Buyer in this regard.
4. If the purpose for which the Buyer wishes to treat, process or use the items differs from the customary use of these items, the Seller shall only guarantee that the items are suitable for this purpose if it has confirmed so in writing to the Buyer.
5. No claim can be made under the guarantee until the Buyer has paid the price agreed for the items.
6. If the Buyer rightly makes a claim under the guarantee, the Seller shall take care of the repair or replacement of the items - at its own discretion - or refund or reduce the agreed price. If there is any additional damage, the provisions set out in the Liability Article of these General Terms and Conditions shall apply.

#### **Article 10: Liability**

1. The Seller shall accept no liability other than the guarantees explicitly agreed or given by the Seller.
2. Subject to the provisions of the previous paragraph, the Seller is only liable for direct damage. Any liability of the Seller for consequential damage such as trading losses, loss of earnings and/or losses sustained, damage caused by delay and/or personal or bodily injury shall be expressly excluded.
3. The Buyer must take all measures needed to prevent or limit the damage.
4. If the Seller is liable for the damage suffered by the Buyer, the Seller's liability for compensation shall at all times be restricted to the maximum amount paid by the insurer where appropriate. If the insurer does not pay or if the damage is not covered by the insurance taken out by the Seller, the Seller's liability for compensation shall be limited to the invoice amount of the delivered items.
5. The Buyer must sue the Seller within 6 months at the latest after the damage it has suffered has become known to it or should have become known to it.
6. The Seller is not liable and the Buyer cannot make a claim under the applicable guarantee, if the damage has arisen due to:
  - a. improper use or use contrary to the purpose for which the items delivered were intended or the directions, advice, operating instructions, leaflets, etc. provided by or on behalf of the Seller;

- b. by incompetent safekeeping (storage) or maintenance of the items;
  - c. by errors or incompleteness in the information provided to the Seller by or on behalf of the Buyer.
  - d. instructions or directions from or on behalf of the Buyer;
  - e. due to the choice of the Buyer, which deviates from the Seller's advice and/or what is customary;
  - f. the choice made by the Buyer in respect of the items to be delivered.
  - g. repairs or other work or processing being carried out on the items delivered by or on behalf of the Buyer without express, prior, written approval from the Seller.
7. The Buyer is fully liable for all damage arising from this in all cases listed in the previous paragraph, and indemnifies the Seller explicitly against any claims from third parties to compensate this damage.
  8. The limitations of the liability stated in this article shall not apply if the damage is due to intent and/or recklessness by the Seller or its supervisory staff on a management level or if mandatory legal provisions oppose this. Only in these cases shall the Seller indemnify the Buyer against any third party claims.

#### **Article 11: Payment**

1. The Seller shall always be entitled to require (partial) advance payment or any other security for payment by the Buyer.
2. Payment shall be made immediately by cash/all major cards/bank transfer. Unless the parties expressly agree otherwise in writing, payment should be made within 14 or 30 days after invoice issue date. The invoice shall be considered correct if the Buyer has not contested it within this payment deadline.
3. If an invoice is not fully paid after expiry of the term referred to in the previous paragraph or if it was not possible to pay the amount by direct debit, the Buyer is due to the Seller a default interest of 2% per month, to be calculated cumulatively over the principal sum. Parts of a month are computed as a full month.
4. If the Buyer still fails to pay after receiving notice, the Seller will furthermore have the right to charge the extrajudicial collection costs to the Buyer, amounting to 15% of the invoice sum, with a minimum of \$150.00.
5. In the absence of full payment by the Buyer, the Seller shall have the right to terminate the agreement without further notice of default by a written statement or to suspend its obligations under the agreement until the Buyer has made full payment or provided appropriate security. The Seller shall also have the aforementioned right of suspension if it has legitimate grounds to doubt the Buyer's creditworthiness even before the Buyer enters into default regarding payment.
6. Payments made by the Buyer will first be deducted by the Seller from all interest and costs due and then from the due and payable invoices that have been outstanding longest, unless the Buyer has stated in writing on payment that it concerns a later invoice.
7. The Buyer may not deduct any claims of the Seller from any outstanding claims that it may have on the Seller. The aforesaid also shall apply if the Buyer requests a (temporary) suspension of payment or is declared bankrupt.
8. If the customer (the Buyer) fails to pay despite reminders, it is, without further notice fully responsible for all judicial and extrajudicial costs that Curvyfashionusa (the Seller) is being required and compelled to make.

#### **Article 12: Retention of Title**

1. The Seller shall retain title of all items delivered and to be delivered up until the point at which the Buyer shall completely fulfill all payment obligations towards the Seller.
2. The payment obligations referred to in the previous paragraph consist of payment of the purchase price of the items, increased by claims relating to work performed in connection with that delivery, as well as claims relating to any damage due to the Buyer's attributable failure to meet its obligations, including payment of damages, extrajudicial collection costs, interest and possible penalties.
3. If this refers to the delivery of identical, non-individualized items, the consignment of items relating to the oldest invoice shall be considered to have been sold first. Therefore, retention of title will always remain with the items delivered which may be still in stock, in the shop and/or form a part of the inventory and equipment of the Buyer on invoking retention of title.
4. All items in which title is retained, may not be re-sold by the Buyer in the framework of the ordinary business operations, unless the Buyer also stipulated retention of title with its own customers to the items delivered.
5. As long as the title is retained in the items delivered, the Buyer may not pledge the items in any manner or bring items under the (actual) control of a financier by means of lists containing the pledged items.
6. The Buyer must notify the Seller immediately if third parties pretend to have ownership and/or other rights to the items in which title is retained.
7. The Buyer shall safe keep the delivered items carefully and as identifiable property of the Seller for as long as title is retained in them.
8. The Buyer has to take out a business interruption or home contents insurance to ensure that the items delivered which are subject to retention of title are included in the policy and the Buyer will allow the Seller inspection on demand into the insurance policy and the accompanying proofs of premium payments.
9. If the Buyer contravenes the provisions of this article or if the Seller claims retention of title, the Seller and its employees shall have the irrevocable right to enter the Buyer's premises and take back the items subject to retention of title. This applies without prejudice to the Seller's entitlement to compensation of damage, lost profit and interest and the right to terminate the agreement without any notice of default by a written statement.

**Article 13: Bankruptcy, loss of power to dispose of property, etc.**

1. The Seller always has the right to terminate the agreement without any notice of default by a written statement to the Buyer, at the time when the Buyer:
  - a. is declared bankrupt or files for bankruptcy;
  - b. applies for (temporary) suspension of payment;
  - c. is affected by enforceable seizure;
  - d. is placed under guardianship or judicial supervision;
  - e. otherwise loses the power to dispose of its property or loses legal capacity regarding all or part of its assets.
2. The Buyer must always notify the guardian or administrator of the (contents of the) agreement and these General Terms and Conditions.

**Article 14: Force majeure**

1. In the event of *force majeure* on the part of the Buyer or the Seller, the Seller shall have the right to terminate the agreement by a written statement to the Buyer or to suspend the fulfillment of its obligations towards the Buyer for a reasonable term without being obliged to pay any compensation.
2. *Force majeure* with respect to the Seller in the context of these General Terms and Conditions shall include: a non-culpable shortcoming by the Seller, a non-culpable shortcoming of third parties or suppliers engaged by the Seller or other serious grounds on the part of the Seller.
3. Circumstances which are considered *force majeure* on the part of the Seller include: war, revolt, mobilization, riots at home and abroad, government measures, strikes within the company of the Seller and/or of the Buyer, or a threat of these and other circumstances, disruption of existing exchange rates at the time the agreement was concluded, operational failures due to fire, burglary, sabotage, power failure, internet or telephone failures, natural phenomena, (natural) disasters and suchlike, as well as transport problems and delivery problems arisen from weather conditions, roadblocks, accidents, and import and export hindering measures.
4. If *force majeure* occurs when only part of the agreement has been executed, the Buyer shall in any case be obliged to fulfill its obligations towards the Seller until that moment.

**Article 15: Cancellation, Suspension**

1. If the Buyer wishes to cancel the agreement prior to or during the execution thereof, it shall be due compensation to be further determined by the Seller. This compensation shall comprise all costs already incurred by the Seller and its damage suffered due to the cancellation, including lost profits. The Seller is entitled to establish the aforesaid compensation and - at its discretion and depending on the deliveries already made - to charge 20 to 100% of the agreed price to the Buyer.
2. The Buyer is liable towards third parties for the consequences of the cancellation and indemnifies the Seller against any claims from third parties arising from this.
3. The Seller is entitled to settle the amounts paid by the Buyer with the compensation due by the Buyer.
4. Should the execution of the agreement be suspended at the request of the Buyer, the costs incurred until that moment shall be immediately due and payable and the Seller will have the right to charge these to the Buyer. Furthermore, the Seller shall have the right to charge to the Buyer all costs incurred or to be incurred during the suspension period.
5. If the execution of the agreement cannot be resumed after the agreed suspension period, the Seller shall have the right to terminate the agreement by a written statement to the Buyer. If the execution of the agreement is resumed after the agreed suspension period, the Buyer must compensate any costs of the Seller possibly arising from this resumption.

**Article 16: Applicable law / Jurisdiction**

1. The agreement entered into between the Seller and the Buyer shall be governed exclusively by US law.
2. The applicability of the Vienna Sales Convention (CISG) is explicitly excluded.
3. Any disputes shall be submitted to the competent court in the place where the Seller is established, although the Seller shall always retain the right to submit a dispute to the competent court in the place where the Buyer is established.
4. If the Buyer is established outside The USA, the Seller shall have the right to choose to submit the dispute to the competent court in the country or the state where the Buyer is established.