

General Terms and Conditions of *Thuiswinkel*

These General Terms and Conditions of the Dutch *Thuiswinkel* Organization were drawn up in consultation with the Consumers' Association within the framework of the Self-Regulation Coordination Group (CZ) of the Social and Economic Council and will become operable as of 1st January 2012.

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Article 1 – Definitions

The following definitions apply in these terms and conditions:

1. **Withdrawal period:** the period within which the consumer can make use of his right of withdrawal;
2. **Consumer:** the natural person whose action is not within the course of a profession or business and who enters into an distance contract with the trader;
3. **Day:** calendar day;
4. **Extended duration transaction:** a distance contract that relates to a series of products and/or services, whereby the obligation to supply and/or purchase is spread over a period of time;
5. **Durable medium:** every means that enables the consumer or trader to store information that is addressed to him in person in a way that facilitates future consultation and unaltered reproduction of the stored information;
6. **Right of withdrawal:** the possibility for the consumer to waive the distance contract within the withdrawal period;
7. **Trader** the natural or legal person who is a member of the Dutch *Thuiswinkel* Organization and who offers products and/or services to consumers from a distance;
8. **Distance contract:** an contract whereby sole use is made of one or more techniques for distance communication within the framework of a system organized by the trader for the distance sale of products and/or services, up to and including the moment that the contract is concluded;
9. **Technique for distance communication:** means that can be used for concluding an contract, without the consumer and trader being in the same place at the same time.

Article 2 – Identity of the trader

Name trader: (name according to the articles of association, plus any trade name)

Registered address:

Office address, should this differ from the registered address;

Telephone number and time(s) at which the trader can be contacted by telephone;

E-mail address:

Chamber of Commerce number:

VAT identification number:

Should the activity of the trader be subject to a relevant licensing system: the data of the supervising authority;

Should the trader practice a regulated profession:

- the professional association or organization with which he is affiliated;
- the professional title, the town/city in the EU or EEA where this was granted;
- a reference to the professional rules that apply in the Netherlands and instructions as to where and how these professional rules can be accessed.

Article 3 – Applicability

1. These general terms and conditions apply to every offer made by an trader and to every distance contract that is realised between an trader and a consumer.
2. Prior to the conclusion of a distance contract, the text of these general terms and conditions will be made available to the consumer. If this is not reasonably possible, the trader will indicate, before the distance contract is concluded, that the general terms and conditions are available for inspection at the trader's premises and that they will be sent free of charge to the consumer, as quickly as possible, at the consumer's request.
3. If the distance contract is concluded electronically, then, contrary to the previous paragraph, and before the distance contract is concluded, the consumer will be provided with the text of these general terms and conditions electronically, in such a way that the consumer can easily store them on a durable data carrier. If this is not reasonably possible, then before concluding the distance contract, the trader will indicate where the general terms and conditions can be inspected electronically and that at his request they will be sent to the consumer free of charge, either electronically or in some other way.
4. In cases where specific product or service-related terms and conditions apply in addition to these general terms and conditions, the second and third paragraphs apply by analogy and the consumer can always invoke the applicable condition that is most favorable to him in the event of incompatible general terms and conditions.

Article 4 – The offer

1. If an offer is subject to a limited period of validity or is made subject to conditions, this will be explicitly mentioned in the offer.
2. The offer contains a complete and accurate description of the products and/or services being offered. The description is sufficiently detailed to enable the consumer to make a proper assessment of the offer. If the trader makes use of illustrations, these will be a true representation of the products and/or services being offered. The trader is not bound by obvious errors or mistakes in the offer.
3. Every offer will contain such information that makes it clear to the consumer what rights and obligations are involved in accepting the offer. This includes, in particular:
 - the price, including taxes;
 - any costs of delivery;
 - the way in which the contract shall be concluded and which actions this will require;
 - whether or not the right of withdrawal applies;
 - the method of payment, delivery and implementation of the contract;
 - the period for accepting the offer or the period for which the trader guarantees the price;
 - the size of the tariff for distance communication, if the costs of using the technique for distance communication are calculated on some other basis than the regular basic tariff for the chosen communication technique;
 - if a contract is filed subsequent to its conclusion, and if so, the way in which this can be accessed by the consumer;
 - the way in which the consumer can obtain information about the data he has provided for in the course of the contract, as well as the way he can rectify these before the contract is concluded;
 - the languages in which, in addition to Dutch, the contract can be concluded;
 - the behavioral codes to which the trader is subject and the way in which the consumer can consult these behavioral codes electronically; and
 - the minimum duration of the distance contract, in the event of a contract that involves the continual or periodical supply of products or services.

Article 5 – The contract

1. The contract will be concluded, subject to that which is stipulated in paragraph 4, at the moment at which the consumer accepts the offer and the conditions thereby stipulated have been fulfilled.
2. If the consumer has accepted the offer electronically, the trader will immediately confirm receipt of acceptance of the offer electronically. The consumer can dissolve the contract as long as this acceptance has not been confirmed by the trader.
3. If the contract is concluded electronically, the trader will take suitable technical and organizational measures to secure the electronic transfer of data and he will ensure a safe web environment. If the consumer is able to pay electronically, the trader will take suitable security measures.
4. The trader may obtain information – within statutory frameworks – about the consumer's ability to fulfill his payment obligations, as well as about facts and factors that are important for the responsible conclusion of the distance contract. If that research gives the trader proper grounds for declining to conclude the contract, then he has a right, supported by reasons, to reject an order or application or to bind its implementation to special conditions.
5. Together with the product or service, the trader will send to the consumer the following information, in writing, or in such a way that the consumer can store it on an accessible durable medium:
 - a. the office address of the trader's business location where the consumer can lodge complaints;
 - b. the conditions under which the consumer can make use of the right of withdrawal and the method for so doing, or a clear statement relating to the exclusion of the right of withdrawal;
 - c. information on guarantees and existing after-sales service;
 - d. the data included in article 4, paragraph 3 of these conditions, unless the trader has already provided the consumer with these prior to concluding the contract;
 - e. the requirements for terminating the contract, if the duration of the contract exceeds one year or is indefinite.
6. In case of an extended duration contract, the stipulation in the previous paragraph applies only to the first delivery.

Article 6 – Right of withdrawal

Upon delivery of products

1. When purchasing products, a consumer has the possibility of dissolving the contract, without giving reasons, during fourteen days. This period commences on the day after the product was received by the consumer or a representative previously designated by the consumer and announced to the trader.
2. During this period the consumer will treat the product and its packaging with care. He will only unpack or use the product as far as necessary in order to be able to assess whether he wishes to retain the product. If he wishes to exercise his right of withdrawal, then he will return the product to the trader, with all associated components, and – in as far as this is reasonably possible – in the original state and packaging, in accordance with the reasonable and clear instructions that were provided by the trader.

Upon delivery of services

3. When services are supplied, a consumer has the possibility of dissolving the contract, without giving reasons, during at least fourteen days, starting on the day when the contract was concluded.
4. In order to make use of his right of withdrawal, the consumer will act in accordance with the reasonable and clear instructions that the trader provided when the offer was made and/or at the latest upon delivery.

Article 7 – Costs in a case of withdrawal

1. If a consumer makes use of his right of withdrawal, he shall be responsible for, at most, the costs of returning the goods.
2. If the consumer has paid a sum, the trader will refund this sum as quickly as possible, though at the latest within 30 days after the goods were returned or after the withdrawal.

Article 8 – Preclusion from right of withdrawal

1. The trader can preclude the consumer from having a right of withdrawal as far as is provided for in paragraph 2 and 3 of this article. The preclusion of the right of withdrawal is only valid if the trader clearly stated this fact when making the offer, or at least in good time prior to conclusion of the contract.
2. Preclusion from the right of withdrawal is only possible for products:
 - a) that have been created by the trader in accordance with the consumer's specifications;
 - b) that are clearly of a personal nature;
 - c) that cannot be returned due to their nature;
 - d) that rapidly decay or become obsolete;

- e) the price of which is subject to fluctuations on the financial market over which the trader has no influence;
 - f) for individual newspapers and magazines;
 - g) for audio- and video-recordings and computer software, whereby the consumer has broken the seal.
3. Preclusion from the right of withdrawal is only possible for services:
- a) relating to accommodation, transport, restaurant business or leisure activities to be carried out on a given date or during a given period;
 - b) the supply of which commenced, with the explicit consent of the consumer, before the withdrawal period had lapsed;
 - c) relating to bets and lotteries.

Article 9 – The price

1. During the period of validity indicated in the offer, the prices of the products and/or services being offered will not be increased, except for price changes in VAT-tariffs.
2. Contrary to the previous paragraph, the trader may offer products or services at variable prices, in cases where these prices are subject to fluctuations in the financial market over which the trader has no influence. The offer must refer to this link with fluctuations and the fact that any prices mentioned are recommended prices.
3. Price increases within 3 months after the contract was concluded are only permitted if they are the result of statutory regulations or stipulations.
4. Price increases more than 3 months after the contract was concluded are only permitted if the trader stipulated as much and:
 - a) they are the result of statutory regulations or stipulations; or
 - b) the consumer is authorized to terminate the contract on the day on which the price increase takes effect.
5. Prices stated in offers of products or services include VAT.

Article 10 – Conformity and Guarantee

1. The trader guarantees that the products and/or services fulfill the contract, the specifications stated in the offer, the reasonable requirements of reliability and/or serviceability and the statutory stipulations and/or government regulations that existed on the date that the contract was concluded. If agreed the trader also guarantees that the product is suited for other than normal designation.
2. A guarantee arrangement offered by the trader, manufacturer or importer does not affect the legal rights and claims that a consumer, as a result of the contract, can enforce against the trader.

Article 11 – Supply and implementation

1. The trader will take the greatest possible care when receiving and implementing orders for products and when assessing applications for the provision of services.
2. The place of delivery is deemed to be the address that the consumer makes known to the company.
3. Taking into consideration that which is stated in article 4 of these general terms and conditions, the company will implement accepted orders with efficient expedition, though at the latest within 30 days, unless a longer period of delivery has been agreed. If delivery suffers a delay, or if the delivery cannot be implemented, or only partially, the consumer will be informed about this at the latest 30 days after the order was placed. In this case, the consumer has a right to dissolve the contract free of charge and a right to possible damages.
4. In the case of dissolution in accordance with the previous paragraph, the trader will refund the consumer the sum paid as quickly as possible, though at the latest within 30 days after that dissolution.
5. Should delivery of a product that has been ordered prove impossible, the trader will attempt to provide a replacement article. The fact that a replacement article is being supplied will be stated clearly and intelligibly, at the latest upon delivery. The right of withdrawal cannot be precluded in the case of replacement articles. The costs of return shipments will be charged to the trader.
6. The risk of damage and/or loss of products rests upon the trader up to the moment of delivery to the consumer or a representative previously designated by the consumer and announced to the trader, unless this has explicitly been agreed otherwise.

Article 12 – Extended duration transactions: duration, termination and prolongation

Termination

1. The consumer has a right at all times to terminate an open-ended contract that was concluded for the regular supply of products (including electricity) or services, subject to the agreed termination rules and a period of notice that does not exceed one month.
2. The consumer has a right at all times to terminate a fixed-term contract that was concluded for the regular supply of products (including electricity) or services at the end of the fixed-term, subject to the agreed termination rules and a period of notice that does not exceed one month.
3. With respect to contracts as described in the first two paragraphs, the consumer can:
 - terminate them at all times and not be limited to termination at a specific time or during a specific period;
 - terminate them in the same way as that in which they were concluded;
 - always terminate them subject to the same period of notice as that stipulated for the trader.

Prolongation

4. A fixed-term contract that was concluded for the regular supply of products (including electricity) or services may not be automatically prolonged or renewed for a fixed period of time.
5. In departure from that which is stated in the previous paragraph, a fixed-term contract that has been concluded for the regular supply of daily or weekly newspapers or magazines may be automatically prolonged for a fixed term that does not exceed three months, if the consumer is at liberty to terminate this prolonged contract towards the end of the prolongation, with a period of notice that does not exceed one month.
6. A fixed-term contract that has been concluded for the regular supply of products or services may only be automatically prolonged for an indefinite period of time if the consumer has at all times the right to terminate, with a period of notice that does not exceed one month and, in the case of a contract to supply daily or weekly newspapers or magazines regularly but less than once per month, a period that does not exceed three months.
7. A fixed term contract for the regular supply, by way of introduction, of daily or weekly newspapers and magazines (trial subscriptions or introductory subscriptions) will not be automatically prolonged and will automatically terminate at the end of the trial period or introductory period.

Duration

8. If the fixed-term of a contract exceeds one year, then after one year the consumer has at all times a right to terminate, with a period of notice that does not exceed one month, unless reasonableness and fairness dictate that premature termination of the contract would be unacceptable.

Article 13 – Payment

1. As far as no other date has been agreed, sums payable by the consumer should be paid within 14 days after the start of the withdrawal period as stipulated in article 6 paragraph 1. In the case of a contract to provide a service this 14 days start on the moment the consumer receives the trader's confirmation of the contract.
2. When selling products to consumers, the general terms and conditions may never stipulate an advance payment in excess of 50%. Where advance payment is stipulated, the consumer cannot invoke any rights whatsoever in relation to the implementation of the order or service(s) in question before the stipulated advance payment has been made.
3. The consumer is obliged to report immediately to the trader any inaccuracies in payment data provided or stated.
4. In the event of non-payment on the part of the consumer, the trader has the right, subject to statutory limitations, to charge the consumer reasonable costs about which the consumer was informed in advance.

Article 14 – Complaints procedure

1. The trader provides for a complaints procedure, that has been given sufficient publicity, and will deal with a complaint in accordance with this complaints procedure.
2. Complaints about exercising the contract must be submitted to the trader without delay, in their entirety and clearly defined, after the consumer has discovered the defects.
3. A reply to complaints submitted to the trader will be provided within a period of 14 days, calculated from the date of receipt. If it is anticipated that a complaint will require a longer processing time, then the trader will reply within 14 days, confirming receipt and indicating when the consumer can expect a more elaborate reply.
4. A complaint about a product, a service or the trader's service can also be submitted via a complaints form on the consumer's page of the website of the Dutch *Thuiswinkel* Organization, www.thuiswinkel.org. The complaint is then sent both to the trader concerned and the Dutch *Thuiswinkel* Organization.

5. If the complaint cannot be solved in joint consultation, then it becomes a dispute that is subject to the disputes settlement scheme.

Article 15 – Disputes

1. Contracts entered into between a trader and a consumer and which are subject to these general terms and conditions are subject only to Dutch law.
2. Disputes between a consumer and a trader over the conclusion or exercising of contracts relating to products and services to be supplied by this trader can be put before the *Thuiswinkel* Disputes Committee, P.O. Box 90600, 2509 LP in The Hague (www.sgc.nl), by either the consumer or the trader, with due observance of that which is stipulated below.
3. The Disputes Committee will only deal with a dispute if the consumer first put his complaint, without delay, to the trader.
4. The dispute should be submitted to the Disputes Committee, in writing, at the latest by three months after the dispute arose.
5. If a consumer wants to put a dispute before the Disputes Committee, the trader is bound by that choice. If it is at the wishes of the trader, then the consumer will indicate, in response to a written request made by the trader, whether he is in contract, or prefers the dispute to be dealt with by the competent law-court. If the consumer does not indicate his choice to the trader within a period of five weeks, then the trader has a right to put the dispute before the competent law-court.
6. Rulings of the Disputes Committee are subject to the conditions as stipulated in the regulations of the Disputes Committee. Decisions of the Disputes Committee take the form of binding advice.
7. The Disputes Committee will not deal with a dispute – or will terminate their intervention – if the trader has been granted a suspension of payments, gone bankrupt or has actually terminated business activities before the committee dealt with the dispute during a session and rendered a final ruling.
8. If another disputes committee that is recognized or affiliated with the Disputes Committee Foundation for Consumer Affairs (SGC) or the Complaints Institute Financial Services (Kifid) is competent, in addition to the *Thuiswinkel* Disputes Committee, the latter will have exclusive jurisdiction for disputes relating mainly to the method of distance sales or services. For all other disputes, this applies to the other disputes committees recognized by the SGC or affiliated with the Kifid.

Article 16 – Branch guarantee

1. The Dutch *Thuiswinkel* Organization guarantees the fulfilment of obligations of her members in relation to binding advices imposed on them by the *Thuiswinkel* Disputes Committee, unless the member decides to put the binding advice before a law-court for verification within two months after the date of that advice. In case of law-court verification the suspension of the guarantee will end and the guarantee will come into effect again upon the court ruling becoming final and conclusive, whereby the court has declared that the binding advice has binding effect. Up to a maximum sum of € 10.000,= per binding advice the Dutch *Thuiswinkel* Organization will pay this sum to the consumer. In case of sums higher than € 10.000,= per binding advice, the sum of € 10.000,= will be paid. As far as the sum is higher than € 10.000,= the Dutch *Thuiswinkel* Organization has the obligation to take reasonable adequate efforts to pursue the member to fulfil the binding advice.
2. Application of this guarantee requires the consumer to submit a written appeal to the Dutch *Thuiswinkel* Organization and to transfer his claim on the trader to the Dutch *Thuiswinkel* Organization. As far as the claim on the trader exceeds the sum of € 10.000,=, the consumer will be offered the possibility to transfer his claim on the trader above the sum of € 10.000,= to the Dutch *Thuiswinkel* Organization, where after this organization will pursue payment of the claim in court on her own title and costs.

Article 17 Additional or different stipulations

Additional stipulations or stipulations that differ from these general terms and conditions, may not be detrimental to the consumer and should be recorded in writing, or in such a way that consumers can store them in a readily accessible manner on a durable medium.

Article 18 – Amendment to the general terms and conditions of *Thuiswinkel*

1. The Dutch *Thuiswinkel* Organization will only amend these general terms and conditions after consultation with the Consumers' Association.
2. Amendments to these terms and conditions will only come into effect after they have been published in the appropriate way, on the understanding that where amendments apply during the validity of an offer, the stipulation that is most favorable to the consumer will prevail

Address of the Dutch *Thuiswinkel* Organization: P.O. Box 7001, 6710 CB EDE, the Netherlands.

Rights can only be derived on the basis of the Dutch version of these general terms and conditions.