

## **1** Scope

1.1 Excluding any other terms or conditions that may apply to such, these Terms of Sale and Delivery shall apply to any and all offers, contracts and deliveries related to the products either manufactured, or offered for sale, by the Seller.

1.2 Under these Terms of Sale and Delivery, the following terms shall have the following meanings:

- a. Seller Studio Floris Schoonderbeek B.V;
- b. Buyer the Seller's contracting party;
- c. Consumer the Buyer who is a natural person and not acting within either his professional capacity, or on behalf of an enterprise;
- d. Consumer Sale a sale agreed between Seller and Consumer;
- e. Distance Sale a Consumer Purchase made by an agreement reached over the internet, by phone, fax or mail.

1.3 Whenever these Terms of Sale and Delivery require any notice to be given in writing, such will be understood as to also include any correspondence via e-mail.

## **2** Offers and Contracts

2.1 Any offer made, or quote issued, shall remain valid either until such time as it indicates to expire, or until stock runs out.

2.2 Any Distance Sales concluded will not see any contract concluded before their moment of confirmation by the Seller to the Buyer.

2.3 The Seller shall remain entitled to employ third parties in his performance of the contract. Any rights and entitlements these Terms of Sale and Delivery, or any ensuing agreements, bestow on the Seller, shall also be bestowed on any third party or agent the Seller may retain.

## **3** Price Changes

3.1 The Seller shall remain entitled to commensurately amend his sale prices in the event that the prices for raw materials, labour costs, tariffs, taxes, or any other external costs (be they the result of exchange rate fluctuations or otherwise) were to rise.

3.2 The Seller will, in the event of such an occurrence, notify the Buyer of this at his earliest possible opportunity to do so, upon which the Buyer may then, as he is so entitled under Dutch law, and unless a provision was agreed stipulating delivery to not be made within three months of the date of purchase, or the price rise is one resulting from legislative changes, subsequently elect to cancel the contract.

## **4** Delivery

4.1 The Seller will either state a date and time for delivery, failing which delivery will be made ten weeks following the date of purchase. All delivery times listed are approximations and should never be deemed 'hard' deadlines. In the event that the Seller were to fail to meet the scheduled delivery time, the Consumer will then be held to offer him a reasonable opportunity to yet make that delivery. Failing the Seller's ability to do this, the Consumer will then be entitled to cancel the contract.

4.2 In the event that the Seller were to either require date from the Buyer to allow him to effectuate the contract, or a (partial) deposit was agreed under the contract, the delivery period will not commence before the Seller has received either the full and correct data, or the deposit referred to.



4.3 Unless expressly agreed to otherwise in writing, deliveries to Consumers are made on an ex works basis. In the event that delivery were to be made to a different location, the products ordered will be delivered at the address provided by the Buyer at the time of conclusion of the sale. This will include any deliveries made to the post office, or any third parties or neighbours as indicated by the Buyer in case of the Buyer's absence. Risk and responsibility for the products delivered will transfer to the Buyer at the moment of delivery.

4.4 Any refusal by the Buyer to accept a delivery, may see the Seller charge him for any costs he may incur as a result of that refusal. Notwithstanding any of his rights to seek full damages, this will also leave the Seller entitled to cancel the contract in question.

## **5 Retention of Title**

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The Seller shall retain title to any and all products delivered, until such time as the Buyer has satisfied all obligations vis-à-vis the Seller resting upon him pursuant to the contract.

## **6 Dissolution of Contract and Return of Goods**

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6.1 Once the order has been confirmed, the Buyer will only be entitled to change or cancel his order with the Seller's consent. In the event that the Seller were to have already incurred costs as a result of said change or cancellation, he then will be entitled to recover these from the Buyer. Distance Sales see the Buyer entitled to cancel the sale without having to provide any reasons for doing so within fourteen (14) working days of the sale, either by way of providing an unambiguous notice to that effect, or by submitting the notice of cancellation form which can be found available from the Seller's website.

6.2 In the event that the sale price and shipping costs have already been paid, such monies will be repaid at the earliest possible opportunity, though no later than fourteen (14) days from the date of the Buyer's notice of cancellation being provided to the Seller, provided that there is no suspicion of the returned goods having been opened without any need for doing so in the assessment of their condition, or them having already been used, and/or damaged by the Buyer. Unless expressly agreed to otherwise by the Buyer, repayment will be issued via the same method of payment as was used on the initial transaction.

6.3 The Buyer will return the product at the earliest possible opportunity, though no later than fourteen (14) days from the date of him providing the Seller his notice of cancellation. The Seller shall be entitled to defer issue of repayment until such time as the product has either been returned to his possession, or the Buyer offering him proof of it having already been dispatched back to him; whichever is first.

6.4 Article 6.2 does not apply to Distance Sales of:

- a. goods with a price that is subject to exchange rate fluctuations, which lie beyond the Seller's realm of control.
- b. goods which:
  - 1) were produced to the Buyer's specifications;
  - 2) are of a clear personal nature;
  - 3) are of a nature that prohibits their return shipping;
  - 4) swiftly either perish or age;
- c. services rendered with the Consumer's consent prior to the lapsing of the seven (7) working day period.

6.5 All return shipments of products delivered require the Seller's written consent and should proceed in the manner indicated by the Seller at the conclusion of the sale. Any immediate costs for return shipments made pursuant to this article will be incurred at the Buyer's expense.



## 7 Payment

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7.1 The Seller shall at all times remain entitled to demand the Buyer to pay him a (partial) deposit on the sale price.

7.2 Any deliveries made subject to payment by invoice will require settlement thereof within fourteen (14) days and will not see the Buyer entitled to any discounts and or settlement with any other payables.

7.3 In the event that the invoice's pay-by date were to have passed without its (full) payment being received, the Buyer shall be deemed in default, at which time he will also be held to pay interest accrued at the legal rate for consumer transactions. The Seller shall be entitled to recover any costs he incurs as a result of any failure of timely payment, such as extra-judicial collection costs, the costs of litigation and any and all legal fees imaginable, from the Buyer. Extra-judicial collection costs will be deemed to have been incurred in accordance with the "Netherlands Extrajudicial Collection Costs Decree [Dutch: Besluit Vergoeding voor Buitengerechtelijke Incassokosten]." This decree lists the following rates:

- Minimum rate EUR 40
- 15% over the first EUR 2,500
- 10% over the next EUR 2,500
- 5% over the next EUR 5,000
- 1% over the next EUR 190,000
- 0.5% over any remaining amount of the main sum, with a maximum of EUR 6,775

7.4 Collection costs will not be charged before such time as the Seller is sent a reminder of payment allowing him an additional fourteen (14) days of the date of issue of that reminder within which to, albeit, belatedly, make payment.

## 8 Right of Suspension and Cancellation of Contract

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8.1 The Seller shall, notwithstanding any of the provisions mentioned here both on Force Majeure, as well as those above in Article 6, remain entitled to, either in whole or in part, suspend, or, in whole or in part, cancel, without requiring either prior notice of default or a court order to that effect, any of the obligations resting upon him pursuant to any existing contracts in the event that:

- a. the Buyer is found either in default, or if the Seller has good reason fear that the Buyer will not be able to meet, or timely meet, his obligations;
- b. the Buyer was to be wound up, (near to being) granted a suspension of payments, declared bankrupt, or otherwise rendered unable to fully freely dispose of his assets; or
- c. circumstances were to have arisen which would either render performance permanently impossible, or render the Buyer's unamended observance of the contract no longer reasonable.

8.2 The eventualities listed under 8.1 shall furthermore see any and all potential obligations on the part of the Buyer become immediately due, whilst also see the Seller unable to be held liable for any damages. The latter shall, however, not apply in situations where the contract was cancelled due to circumstances that cannot be attributed to the Consumer.



## 9 Warranties and Warranty Claims

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9.1 The products to be delivered by the Seller are to meet the usual standards such products may reasonably be expected to meet and which their normal use would require at the moment of their delivery. Any warranty provisions for products supplied to the Seller by his suppliers, or other third parties that might apply, shall apply where applicable.

9.2 Installing a Groundfridge will usually not require any prior planning permission. Please check any legal requirements you may be held to meet with your local authority.

9.3 The Buyer shall, in the event that he would want to use the product outside of the Netherlands, himself verify whether the products are suited for use in that particular country, and whether they meet the (legal) requirements in place there.

9.4 The Buyer is held to check the products delivered to him immediately upon his receipt of them. The Buyer is to notify the Seller, in writing and under the provision of his reasons for doing so, and within two (2) months of any defects that might have surfaced.

9.5 The temperature level inside the Groundfridge is dependent on the temperature of its surrounding soil (i.e. the ground temperature at a depth of one metre below ground).

9.6 In the event that a product has been proven to fail to meet the standards it was held to meet pursuant to this contract, and provided that the Seller was timely notified of these defects, the Seller shall have the option of either issuing a replacement, or a refund of the sale price plus shipping costs.

9.7 Any and all data, models, and imagery pertaining to colour schemes, materials used, measurements and finishing are of an indicative nature. Any minimal discrepancies with these found either in or on the product do not offer sufficient grounds for rejecting it, or claiming any discount on their sale price, cancellation of contract, or seeking damages.

## 10 Intellectual Property

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10.1 The Buyer herewith expressly recognises that any and all intellectual property rights pertaining to the products, materials and information, including also (the appearance of) samples, packaging, labelling, design, the composition and/or specifications of samples, products and semi-finished products, as well as any technical expertise, models, moulds, templates, designs and patterns the Seller has offered at the Buyer's disposal are reserved by the Seller, his suppliers or other entitled parties.

10.2 In the event that, and insofar as, the Seller were to manufacture products or packaging pursuant to the Buyer's express instructions, e.g. specifications, designs, sketches, models or patterns provided by the Buyer, the Buyer will indemnify the Seller from any liability for intellectual property right infringements. the Buyer will indemnify the Seller from any third-party claims and will reimburse him for any costs the Seller has incurred in relation to such claims.

## 11 Liability

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11.1 The Seller may not be held liable for damage incurred due to:

- a. improper use of the products delivered, or use for purposes other than those objective standards would consider appropriate;
- b. the Seller's reliance on incorrect or incomplete data issued by, or on behalf of, the Buyer.
- c. third parties retained in the performance of the contract either at the request of the Buyer, or with the Buyer's consent;
- d. materials delivered or services performed either at the request of the Buyer, or with the Buyer's consent; or
- e. misunderstandings, corruption, delays, or the incorrect understanding of orders and notifications as a result of the use of either the internet or any other (electronic) means of communication.



11.2 The Seller can only be held liable for damage incurred that is directly attributable to him. The Seller cannot be held liable for any indirect damage incurred. Such damage includes, yet is not limited to, consequential damage, loss of profits, corrupted or destroyed data or materials, or loss of revenue. This limitation of liability will not venture beyond the legal boundaries of Article 7:24 paragraph 2 DCC.

11.3 Insofar as the Seller can be held liable for any damages, these will not exceed the total amount of the invoice related to the (partial) delivery, and this amount will also not exceed EUR 45,000, and will, furthermore, at all times remain limited to the amount of pay-out the Seller is issued by his insurer in the matter in question.

11.4 The Buyer will indemnify the Seller from any claims brought by third parties in relation to the performance of the contract and arising from conduct attributable to the Buyer.

11.5 The limitations listed in Articles 11.1-4 shall not apply in the event that:

- a. the damage is the result of intent or gross negligence on the part of the Seller, his superior, or his subordinates;
- b. a case can be made for consumer liability in respect of a consumer in the sense of Book 6 Title 3 Section 3 of the Dutch Civil Code.

## 12 Force Majeure

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12.1 In the event that Force Majeure were to render the Seller unable to perform his obligations under the contract, he will be entitled to suspend his performance thereof until such time as the situation of Force Majeure has ceased its existence. In the event that this period were to last in excess of two (2) months, both parties will then be entitled to cancel their contract in relation to the products affected by the Force Majeure, free of any pain of liability for damages claimed by the other party. Such an eventuality would also see the Buyer nevertheless held to pay for the products that were delivered to him.

12.2 For the purposes of these Terms of Sale and Delivery, Force Majeure is to be understood as to include, yet to not be limited to, all such circumstances deemed a Force Majeure by law and case law, and any and all foreseen and unforeseen external causes beyond the Buyer's realm of control rendering him unable to meet his obligations.

## 13 Applicable Law and Competent Court

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13.1 This contract is governed by Dutch law, and shall remain governed by Dutch law, even if any obligation resulting from this contract were to, either in whole, or in part, be satisfied outside of the Netherlands, or the Buyer were to reside there. The application to this Agreement of the provisions of the United Nations Convention on Contracts for the International Sale of Goods is herewith explicitly excluded.

13.2 Non-consumer Buyers may only bring first instance proceedings with the competent court at Arnhem.

13.3 Parties will not seek legal recourse in the courts before having undertaken their utmost to resolve their dispute among themselves first.

## 14 Other Provisions

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14.1 The English version of these Terms of Sale and Delivery will at all times determine how they should be interpreted.

14.2 Unless made in writing, any changes or amendments made to these Terms of Sale and Delivery shall remain void. No additional terms and conditions employed by the Seller, nor even any conflicting provisions shall render any remaining provisions of these Terms of Sale and Delivery either invalid, or inapplicable.

