



**General terms and conditions of sale, delivery and payment  
Lazy Jack BV January 2011**

**1. General**

1. In the general conditions the following terms shall mean:
  - 'General conditions' : these general conditions
  - 'Supplier': Lazy Jack BV Amsterdam, the Netherlands
  - 'Client': the contracting party
  - 'Order': the order of the client which specifies the amount and articles he wants to buy
  - 'Contract': the agreement between client and supplier, with regard to the purchase of products by the client.
  - 'Products': the products being offered for sale by the supplier.
  - 'Internet-purchase': the purchase realized through using the internet by both parties, the client has ordered by using the internet and the supplier has agreed by using the internet. Unless specified otherwise the term 'contract' includes 'internet-purchase'.

**2 Applicability**

1. Any contracting party will be referred to hereinafter as 'client'. These terms and conditions are applicable to and from part of all offers and quotations made by the supplier, all orders placed with it and all contracts concluded by it. Supplier will notify the client where he can find the general conditions. The general conditions will be made available to the client through supplier's website and will be handed out to the client on first demand.  
In the case of an internet-purchase the supplier will notify the client where he can find the general conditions. The supplier will make sure that the client can download the general conditions.
2. Supplier has at all times the right to amend the general conditions. Such an amendment shall become effective fourteen (14) days after the date on which the amended general conditions are sent to the client.  
In case of the client's written objection to the amendments within fourteen (14) days after receiving the announcement, the original general conditions will continue to apply to him. Any departure from these terms and conditions will be valid only if confirmed in writing by the supplier's board of directors. By accepting an offer or ordering goods these terms and conditions are accepted by the client

3. The acceptance by the supplier of any non compliance during a short or longer period (possibly silent), shall not constitute a waiver of any of his rights under the general conditions. Client may never enforce any rights on account of the fact that supplier applies the conditions of delivery flexibly.
4. Any general conditions of client will not apply.

### **3. Offers and orders**

1. All quotations and offers are without obligation to the supplier unless explicitly stated otherwise.
2. An agreement between parties is only realized in case of acceptance of the order and payment of the invoice of the order by the supplier.  
Supplier has the right to refuse orders. In case of non-acceptance of the order, supplier will report this within fourteen (14) days after receiving the order. When payment in advance has been agreed to, the supplier will provide the client with an advance invoice, which must be paid entirely within the stated term, failing which the order expires by right.
3. At all times the supplier is entitled to refuse an order, entirely or partly, without a statement of reasons, without becoming liable for any damages in any way, even when the client has previously purchased products from the supplier.
4. The contents of flyers, brochures and price lists will be subject to changes and are not binding on the supplier.

### **4 Prices**

1. All prices and shipping rates are listed in euros unless otherwise agreed. All prices do not include taxes, shipment costs, transportation costs, insurance, duties, import fees or custom fees charged by the local government of client.
2. The prices of the product may be indexed every quarter in accordance with the consumer price index figure, as published from time to time by the Dutch Central Bureau of Statistics (CBS-all households).
3. The supplier is entitled to increase the agreed price unilaterally, when between the date of the order and the intended date of delivery a cost increase incurs, for instance due to an increase of the prices of raw materials, materials or parts, or energy prices, salaries or social charges, etc. The supplier will inform the client in writing as soon as possible of such change in price. When the client does not agree with the announced change in price, it must inform the supplier in writing before the intended date of delivery, in such case the supplier has the option to annul the order or to agree to the original price for the client.

### **5. Payment**

1. Unless otherwise stated, payment shall be made COD or within 14 days of the date of the invoice, without any discount or right to set-off, by depositing or transferring the amount into a bank account to be specified by the supplier.
2. Payment can be done as specified on the invoice. In case of payment through bank or 'giro'-account, the date of payment is the date on which the amount is credited on the account of supplier. If payment has not been effected within the term specified in paragraph 2, the client will be in default without need of notification, Starting from the first day client is in default, the supplier is entitled to claim interest on the total amount of the invoice including VAT at a rate of 1,5% per month, a part of a month being counted as a full month
3. Additionally, the supplier is entitled to charge the client any extrajudicial costs arising from the client's failure to pay or to pay in time, these costs being fixed for the purpose of the present terms and conditions at 15% of the capital sum, with a minimum of € 250,-. The above provisions are without prejudice to the supplier's right to compensation of all other costs, losses and amounts of interest.

4. Each payment by the client shall in first instance be deemed to cover the owed interest and collecting charges and afterwards the oldest invoice unpaid, even when the client explicitly stated otherwise when making the payment.
5. The supplier is at all times entitled to demand (supplementary) security for payment by the client of the amount that are owed by the client, for example by way of a bank guarantee. When the supplier has sufficient grounds to believe that the client will not be able to fulfil its financial obligations and refuses to supply the requested (supplementary) security, the supplier is entitled to suspend the execution of the order, without prejudice to any of its legal rights of suspension. The supplier is not liable for any loss suffered by the client as a result of such refusal to supply.
6. **Personalised products, custom made for customer**, have to be 100% paid in advance , before production, and can not be returned.

## 6. Delivery

1. The supplier has the right to make partial deliveries and to invoice those separately.
2. Any time and period of delivery agreed and mentioned by the supplier must be considered as a non-binding general indication. The mere excess of the delivery time therefore does not constitute default by the supplier and cannot (for that reason) result in any liability for damages of the supplier. An agreement between the supplier and the client cannot be dissolved on account of excess of the delivery time, unless the supplier still fails to deliver within a reasonable term set in writing upon expiry of the delivery period. The reasonable term may differ from case to case, depending on circumstances. In case of an internet-purchase the delivery will take place within sixty (60) days, except in cases where the supplier has no liability for the delay or cases where delivery has become impossible.
3. Supplier will inform customer about delivery date for **Personalised products, custom made for customers**,
4. In case the client provides the supplier with an address, supplier may send all orders to this address, unless client provides supplier with a different address for the purpose of delivering the orders.

## 7. Retention

1. The risk of loss (among other things), destructions and/ or damage to products to be delivered will pass to the client as soon as the products reach the agreed address of delivery and this risk will remain with the client. The same passing of risk takes place when the supplier offers the products for delivery in conformity with the agreement and the client, for whatever reason, does not purchase the products (in time).
2. The supplier retains title to all goods it has supplied to the client until the purchase price, including any interest and costs, for all goods has been paid in full. In addition, the retention of title applies to any claims that the supplier might obtain towards the client on account of the client's failure to fulfil one or more of its obligations towards the supplier. In the event of late payment the supplier has the right to take back the goods to which he holds title on his own authority, for the account of the client, wherever such goods are located. The client is required to fully cooperate.

## 8. Force majeure

1. The supplier is not required to comply with any obligation towards the client if he is prevented from doing so due to a circumstance beyond his control and that cannot be attributed to him by law, legal act or common opinion.
2. Any obligations on the part of the supplier in respect of delivery or otherwise will be suspended for the duration of the force majeure circumstances, in which case no obligation whatsoever will exist to pay damages.

## 9 Complaints

1. The client is obliged to perform a thorough inspection of the goods immediately after delivery, checking them for shortcomings, and immediately to report in writing if any are discovered, accurately describing the shortcomings found. After a period of 7 days following delivery the client is deemed to have accepted the consignment.
2. The complaint must give a clear and accurate description of the alleged shortcomings. The filing of a complaint does not relieve the client of its obligation to pay the amounts due.
3. The client is obliged to allow the supplier an opportunity to check the shortcomings reported by the client, or to have them checked. If the client denies the supplier such opportunity, the complaint will be deemed unfounded.
4. If the supplier considers the complaint about the shortcomings to be sound, the supplier is obliged to remedy the shortcomings, either by replacing the defective goods without cost, or, if the complaint involves the quantity of the goods, by making up the shortage or by paying compensation, at the supplier's discretion, in each case within a reasonable period.
5. The supplier is not responsible for possible misunderstandings or delays as a consequence of the used (electronic) communication means in the relationship between the client and the supplier. Possible typing errors, minor differences in colour or apparent mistakes in product data of prices, on the website or in other expressions of the supplier, will be explicitly reserved and cannot be held against the supplier.
6. Complaints concerning incorrect invoices sent by the supplier should be made within 7 days of the date of the invoice, where after the client is considered to agree with the amount invoiced.

## 10. Warranties

1. The supplier warrants the quality of the standard products delivered by it for six (6) months. The supplier does not warrant the quality of print or any other custom made product.
2. Supplier's warranty shall not apply:

A in case products have been subject to misuse, misapplication, neglect, damage by circumstances beyond suppliers reasonable control. Some examples: fire caused by smoking, using beanbags with high heels, damage by trousers buttons or other sharp items)

B to insignificant defects and random manufacturing error which can be easily corrected

C for those products or the portions thereof for which warranty is excluded.

3. Differences in colour between products of the same colour as well as shades in colour on one product are excluded from the warranty. An overprint on the cloth is subject to wear and tear and can be vulnerable to damages. Normal wear and tear of the products, which is not under warranty, includes a gradual decrease of the volume of the stuffing material (the EPS beads).

## 11. Liability

1. The liability of the supplier based on the sale and delivery of the products is limited to the fulfilment of its obligations under the articles 6/7 of these general conditions. The supplier is not liable in the event of force majeure (as referred to in Article 8).
2. The supplier is in no way liable to any damage or injury of the client or of third parties as a consequence other than the liability prescribed by law.
3. The client must report in writing to the supplier any damage suffered by it as soon as possible, yet at the latest within eight (8) days after the occurrence of

the event or when the afore mentioned damage becomes known to it. Damage that has not been reported within this term will not be considered for compensation. In any case all legal claims of the client towards the supplier are lapsed after one (1) year to be counted from the date on which the relevant obligation from the order was due or the damage causing event took place.

4. The client indemnifies the supplier against claims on whatever account of third parties in connection with products delivered to it by the supplier, at any rate insofar as such damage in the relationship to the client is not for the supplier's account under the agreement.

## **12 Intellectual property**

1. All rights of intellectual property concerning the products, among others but not exclusively, copyright and design right, are owned by the supplier or its licensor(s) and it is not permitted to reproduce, publish or imitate the products, in whole or in part, without the prior written permission of the right owners.
2. The name Lazy Jack® and the Lazy Jack© -logo with the white letters are registered trade marks of the supplier and may not be used without prior written permission of the supplier, unless permitted by law.
3. The client is not permitted to use the name and/or logo Lazy Jack® in a trade name used by the client or to include it in a domain name used by the client, alphanumerical phone number or any other mark, sign or means of communication, without the prior written permission of the supplier.
4. The supplier is not liable towards the client and therefore not under any obligation to safeguard or compensate, for possible (alleged) infringement of any intellectual property rights of third parties, by the use of the products and/or the name and logo Lazy Jack®
5. The client is not permitted to use the official Lazy Jack® photo's without the prior written permission of the supplier. Included is all the press material such as flyers and catalogues.

## **13. Exigibility and Dissolution**

1. Any sums due by the client to the supplier under any agreement will become fully payable without a notice of default being required in the event of:
  - a. The client's suspension of payments of bankruptcy or any application to that and;
  - b. The client's decision to partially or wholly discontinue or transfer its business;
  - c. Dissolution of the client's company;
  - d. Non-compliance by the client with its obligations towards the supplier, which non-compliance is not remedied within thirty (30) days of receipt of a written statement, without prejudice to the supplier's other rights.

## **14. Transfer**

1. The supplier has the right to transfer its rights and obligations towards the client under the conditions of delivery and/or the order(s) to a third party in which case it will notify the client in time. Under these circumstances the client has the right to dissolve the contract.

## **15 Nullity/Annulability**

1. The nullity and annulability of any provision of the conditions of delivery will not affect the validity of other provisions of the conditions of delivery. The void provision will be substituted by a valid provision that reflects the parties' intentions as contained in the void or voidable article as closely as possible.

## **16 Proof**

1. Unless the client objects, the supplier's records will be deemed proof of the order(s) placed by the client and the payments made by the client and the deliveries made by the supplier.

#### **17. Applicable law and choice of forum**

1. Dutch law applies exclusively to the general conditions, the order and all other relationships between the client and the supplier.
2. The competent court in Amsterdam, the Netherlands has exclusive jurisdiction with regard to all disputes between the client and the supplier without prejudice to the right of the supplier to submit a dispute to the court that has jurisdiction in accordance with the law.